LABOR AND DEMOCRACY

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LABOR AND DEMOCRACY

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THE OLD GOVERNMENT AND THE NEW INDUSTRY

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty for ourselves and our posterity, do ordain and establish this Constitution for the United States of America."—Preamble Constitution of United States.

These are the prime objects of government:

To Establish Justice
To Insure Domestic Tranquillity
To Provide for the Common Defense
To Promote the General Welfare
To Secure the Blessings of Liberty

After almost one century and a half of effort, our government,—the people's government,—is still struggling to achieve these objects. If the near future is to bring success, *we* must help *now*.

PREFACE

In this little volume the author has endeavored to discuss in plain and concise language the relations between government and modern industrial conditions, to point out some of the dangers to democratic institutions inherent in the present labor movement, to carefully appraise the rights of labor, of capital and of the public, to suggest legal principles upon which remedial legislation may be based and briefly to give the first results of an experiment in adjudicating industrial disputes. No attempt is made to exalt the Kansas Industrial Act, but on the contrary the analysis of that Act as found in these pages is intended only to describe an experiment which is being made by government to function in the preservation of the public peace, the protection of the public health, and the promotion of the public welfare. The Kansas Industrial Law is an experiment in government and is not intended as a solution of a problem in sociology. It is based upon the idea that a duty rests upon government, to protect the general public from the evils of industrial warfare as well as from the evils of internecine strife or foreign invasion. It is hoped that high school and college students and citizens generally will find the text readable—even interesting. In the footnotes will be found citations to authorities which, if carefully studied, will enable any person who desires it to acquire a very comprehensive knowledge of the subjects discussed in the book. It is hoped that lawyers at any rate will find these citations valuable.

This question has been considered by many men and

many governments for many years. Steam and electric power and modern machinery have materially changed the relationship between employer and employee. The modern business corporation and the modern trades union have naturally and properly evolved out of these changed conditions and relations. The conflict of interest between the employing corporation (concerned primarily with dividends) on the one hand, and the organized employees (concerned primarily with wages and working conditions) on the other, was overlooked by government so long as the public, the general citizenship, was not seriously affected. Unfortunately, the conflict has often resulted in economic waste, disturbances of the peace, denial of individual liberty, suffering and want. It has affected sometimes considerable sections of the country, and at other times the entire nation. Such governmental agencies as have been provided for the solution of these problems and for the protection of the public have proved, to say the least, inadequate.

The International Association of Rotary Clubs at the convention at Salt Lake City in 1919 adopted a resolution calling upon local clubs to discuss and consider, during the succeeding year, questions affecting the relations between employer and employee. The bill, which when passed by the legislature and approved by the governor, became the Kansas Industrial Law, came out of that discussion. The author of the bill, in drafting the same, used his Rotary speech of a few weeks previous as an outline. Rotarians in many parts of the country have greatly pleased the author of this little volume by frankly admitting that the Kansas Industrial Law was evolved primarily out of the activities of Rotary. The inspirational value of Rotary principles and the hearty support and encouragement of Rotarian comradeship are gratefully acknowledged.

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LABOR AND DEMOCRACY

PART ONE
LIBERTY AND THE UNION

A LAPSE OF THE LAW

In the summer of 1894 three friends met in the reading room of the Masonic lodge in Emporia, Kansas. Two of them were employees of the Santa Fé railway company working as switchmen in the Emporia yards. The other was a young school teacher who was "reading" law on the side. The subject of the conversation was the threatened strike of the railroad men of the country. Eugene V. Debs, since confined in the Federal penitentiary at Atlanta, Georgia, on a conviction of disloyalty, was the head of the American Railway Union and had threatened to call a general strike in sympathy with certain workmen in the paint department of the Pullman car-works at Chicago. The two railway men in the little group mentioned were downcast. They said it looked to them that a strike would be called and they would have to walk out. The school teacher insisted that they didn't have to walk out; that they had no interest in the trouble at the Pullman car-works and no knowledge as

to the merits of the controversy. The railway men said if they didn't walk out, if the strike should be called, they would be branded as "scabs" in every labor union in the country; that they would be condemned by labor organizations everywhere. Shortly afterward the strike was called and the result is history. In and about Chicago the strike soon developed into riot and riot into rebellion. The president of the United States called out the Federal troops. The United States courts issued injunctions. The men lost the strike and order was restored. The two Emporia men tried to get their jobs back. They were refused employment. They applied to the Union Pacific, to the Rock Island, to the Missouri, Kansas and Texas Railway, and even to the Missouri Pacific,—always with the same result. It dawned upon them that they were blacklisted. One of these men had a young wife and two little children. His funds became exhausted. Work was impossible to obtain for the country was full of idle men. He finally undertook farming. He was not prepared for that vocation in funds or by experience. His wife and children suffered hardships which can be imagined only by those who have experienced something of the same trials. The other was a single man. He disappeared from Emporia. Six or eight months afterward the school teacher got a letter from him in which he stated that he had broken through the blacklist and obtained a position as a beginner on a railroad in a remote section of the country. He had changed his name.

The young school teacher proceeded to read law. He learned a few of the old legal maxims. Sir Wil-

liam Blackstone had said that such is the genius of the common law that it affords a remedy for every wrong that may be committed against any man's person or property. "Justice," Sir William said, "should be carried to every man's door." Here was a wrong committed against person and property. By a force which they could not resist these men had been driven from their work. Their personal liberty had in that way been taken away from them. They had been robbed of the right to labor and earn a living—a property right. This had all been accomplished by the strike forced upon them by Debs, as head of the organization, and by the blacklist which had been lifted as a bar against them by their former employers. The school teacher was puzzled. The maxims of the law aforesaid seemed to have failed. There was no remedy for these wrongs afforded by the laws of the land. Justice could not be carried to the door of these Emporia men. In fact, there was no door open to them leading into any judicial tribunal of the country.

A FEW OF THE FUNDAMENTALS OF DEMOCRACY

In the broad, general sense of the term, Americans are democrats. We have firm faith in what has been called "a representative democracy," but is otherwise termed, "a republic." In the republic or representative democracy so much power as is consistent with strength and efficiency in government should be retained by the general citizenship. In a democracy the will of the majority when legally expressed becomes the law of the land. Perhaps no better definition of

democracy has been given than that famous statement of Abraham Lincoln in his Gettysburg address: "Government of the people, by the people, for the people." Modern democracy is in no danger from despotism in the form of monarchy. The Great War settled that issue. And yet the American people seem to be losing faith in the fundamentals of democracy. It seems that the very foundations of our government are being undermined by treacherous foes who gain access to our democratic household by the arts of the hypocrite and the sycophant. In the name of liberty and justice they seek to destroy democracy. We are now in the midst of the most serious times in the history of this government aside from the first three years of the Civil War.

Our optimistic friends may ridicule the idea that democracy is threatened in this country and yet the fact that the government of the United States is challenged by a large and vicious element who demand bolshevism in the place of democracy is so apparent that it cannot be misunderstood. Now, what is bolshevism? The definition of Bolshevism is as simple as Abraham Lincoln's definition of Democracy. Bolshevism is a government of a class, by a class, for a class. The government of the United States was compelled to recognize the danger from that source during the Great War and to some extent since the war. Our government has hunted down, arrested, put in jail, and deported many of these agitators who are demanding the overthrow of a republican form of government and the substitution therefor of a government founded upon the principle of class rule. We are confronted in this country by an organized and powerful group of people

who think their first duty is not to the government of the United States nor to the government of the state in which they live, but to some private organization, corporation, union, lodge, or association. We are, as stated by Justice Brewer in the Debs case in 1895, confronted with a situation in which "individuals are seeking to exercise powers which belong only to government." [1]

Let us not deceive ourselves in this matter. As it was stated so dramatically and so prophetically many years ago by the typical American, "This nation cannot long exist half slave and half free, for a house divided against itself must fall," so it may be said as confidently today, "This nation cannot long exist half democratic and half bolshevic, for a house divided against itself must fall." What we should do today is to reconsecrate ourselves to the principles of democracy as exemplified by our forefathers in the beginning of this republic. We ought to reëstablish that loyalty to democratic principles which we should have had all the time. We ought to learn from the experiences of recent years that loyalty to the government of the United States is the first requisite of citizenship, and that no man who believes he owes a higher loyalty to any other government, institution, or organization has any right to live in this country. No man is a good citizen who believes that he owes a higher allegiance to his labor union, to his lodge, to his church, to his political party, or to the foreign land of his birth than to the government of the United States or to the state in which he lives. No man who conducts himself in

[1] In re Debs: 158 U. S. 564, 39 Law Ed. 1092.

this fashion should be granted the protection of the law which he despises and no penalty which can be inflicted upon that kind of a man is too severe. "Speak softly but carry a big stick" is a motto which was very popular a few years ago. If the author of that motto were now living, no doubt he would revise it to read: "Speak firmly *and* carry a big stick."

The rule of the majority,—

The willing submission of the minority to that rule,—

The largest liberty of the individual consistent with the general welfare,—

Equality of opportunity,—

These are a few of the fundamentals of democracy.

The will of the majority is recorded in the statutory laws of the state and nation, and the *settled conviction* of the majority is inscribed in the constitution of the United States and of the several states and in the judicial decisions of the courts of the land. The courts function as stabilizers to stay public opinion and prevent sudden or unreasonable manifestations of popular will from inflicting injury upon the public, but the settled conviction of the majority has always been and, if democracy is to survive, must always be reflected in the judicial decisions of our highest courts.

Rule of the majority so manifested has been challenged from one end of this land to the other. There is a belief in the public mind that big business concerns and little business concerns have taken advantage of economic conditions to prey upon the general public by profiteering prices, by restrictions of output, by artificial price fixing, by manipulations of the boards of

trade, by adulteration of the product, and by various other methods, known and unknown,—all in violation of the will of the majority as expressed in the laws. On the other hand, the belief is prevalent that labor organizations, big and little, have claimed the right, and in some instances have exercised the power, to prey upon the general public, indirectly perhaps, but nevertheless with grievous results, by demanding that only *controlled* and *disciplined* labor be employed in the essential industries, by limiting the number of laborers through unionization, by increasing the wage, by depreciating the quality of the service rendered, by the shortening of the hours, and by denying to any except organized working men any right to participate in the business activities of the country. And so the rule of the majority fails and the minority refuses submission thereto.

ECONOMIC PRESSURE

Capital and labor alike resort to "economic pressure" so-called to accomplish their ends,—capital for the purpose of increasing dividends, labor for the purpose of increasing wages. Capital closes down a plant or takes its product off the market or combines with other producers of the same commodity to hold for a suitable price. Or, if the wages or the working conditions demanded by labor are disapproved by employers, the lockout is resorted to, thus bringing "economic pressure" to bear upon the working men in order to force compliance with the terms laid down by employers. Organized labor calls a strike or institutes a boy-

cott, pickets the plant, denies the right of others to work, stops the industry, deprives capital of its dividends and the public of the products, disturbs the market, throws other laboring men out of employment, creates an artificial scarcity of the commodity affected, paralyzes the business and brings suffering and sorrow into the homes of the land near and far.

And this is "economic pressure." It is a term which has a muffled sound. It is apparently harmless but "economic pressure" is war. It was "economic pressure" brought to bear upon Germany and the other central empires in the form of the blockade by the sea power of Britain and her allies, which perhaps more than the armies of Haig, Foch and Pershing brought those ancient governments to a tragic end and left a heritage of disease, starvation and death from which those people will not recover for generations to come. The blockade is the most cruel form of warfare because it strikes at the vitals of the people. It affects the poor, the weak, the aged, the helpless, the women and children. It is an expediency which no civilized government ought to use even in war except under the most dire necessity.

The "economic pressure" brought to bear upon the public by means of the strike, the boycott, or the lockout is not different in its general effect from "economic pressure" of the blockade in international war. The suffering caused by the strike or the lockout is the harshest and the most severe upon the poor, the weak, and the helpless. It is a most despicable method of industrial warfare and is not justifiable under any conditions in a land in which law and order hold sway. It

should be condemned with the utmost severity when indulged in for increasing a dividend or a wage. No government worthy of the name, whether democratic or monarchical should permit its people to become the victims of "economic pressure" in time of peace. The laws of the land should provide a means by which the controversy may be adjudicated and such a calamity averted and "if the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws." [2]

CONSERVATION OF INDUSTRIAL RESOURCES

"Economic pressure" means economic waste. We have heard much in recent years of conservation of natural resources. As a political issue "conservation" has been reasonably valuable to a number of ambitious politicians. Conservation of industrial resources is of equal importance. The economic waste in this country caused by industrial disturbances is colossal. Counted in dollars and cents, it amounts to figures that are staggering. William Z. Foster, labor leader, who conducted the recent steel strike, says that struggle alone cost one billion dollars. If that economic waste resulting from industrial warfare could be expressed in terms of the human suffering which it directly causes, the story would be appalling. And yet industrial disputes are looked upon as matters of private interest only, subject to settlement by private treaty or by industrial battle.

[2] In re Debs: 158 U. S. 564, 39 Law Ed. 1092.

POLITICAL PRESSURE

The class consciousness and the class selfishness which prompt the use of "economic pressure" as an industrial weapon, also make of it a political weapon. "Vote only for our friends" is the order sent out from the headquarters of the organization. In other words, the effort is made to subject the power of government to the selfish ends of the class which may, by such methods, be able to control legislation or the administration of the law.

Here the general public suffers because of its lack of organization and because of the cupidity of politicians. The general public at every election is divided along political party lines. Questions of moment to the entire country divide honest, patriotic and right-thinking men. The appeal to party loyalty, the diverse theories with regard to matters of national import, contrary views as to foreign policies, and a multitude of matters involving principles or policies of government demand the attention of the voter. All of this results in the formation of two great political parties claiming popular support. Now, the division is often a very close one, a few votes strategically placed may change the results of a national election. Shrewd politicians seeking only self-interest are willing to "dicker" with persons who have some peculiar influence over some particular class of voters. The Irish vote, the German vote, the labor vote, or some other alleged bloc vote, supposed to be under the control of one or more leaders who claim to be able to deliver the same upon contract, is a subject matter of barter between unscrupu-

lous politicians and equally unscrupulous leaders of the bloc. In their party platforms, political parties by cautious promises or covert suggestion "bid" for the bloc vote. Literature appealing to class prejudice is freely distributed. "Stump" speakers pander to the cupidity or prejudice of the bloc. This is a great menace to our system of government.

The rule of democracy must be the rule of reason. The appeal of democracy is the appeal to the intelligence and conscience of the citizen. The will of the majority must be influenced only by facts and arguments appealing to the intelligence and the moral uprightness of the citizenship. The promotion of the general welfare must be the chief effort. This is the law of civilization. This is what distinguishes civilization from savagery. The rule by economic and political pressure is the law of the jungle. It is an appeal to selfishness or to fear. It is duress and intimidation. It is "frightfulness."

SOME EXAMPLES

The employer of a large number of laboring men serves notice upon his workers that unless the wage is reduced and the working hours extended, the plant will close. The closing of the plant means hardship, starvation,—perhaps disease and death,—to the little children in the working man's home. The working man gives up his right to a fair wage and decent working conditions in order to save his wife and children.

An individual or a collection of individuals combined together as a corporation, owns an industry. This industry may be the fruit of a lifetime of hard work,

close application to business, and self-denial. The hundreds of workers employed in the industry may have been paid a fair wage and been given good working conditions, but they are organized, and in some other similar plant, perhaps hundreds of miles away, a strike is called, possibly a strike which is as nearly justifiable as such things can be. The employees of the industry mentioned are ordered out upon a sympathetic strike. Disobedience means persecution, perhaps violence. The workers obey the strike order. The business may be ruined. The savings of a lifetime may be destroyed. Sorrow, hardship and bitterness may come into the lives of honest, economical, industrious people who have invested their slender competence in the business. Under such duress the management yields or the business goes into bankruptcy.

In either case there is no contract, there is no meeting of minds, there is no consideration of justice or fair dealing. The rights of the opposite party are not considered, the rights of the public are wholly ignored, there is nothing fair in the transaction. It is government by intimidation and duress.

A bandit kidnaps the child of a wealthy family, then serves notice upon the distracted parents that unless a large sum of money be paid, the child's life will be taken. The bandit has committed a crime against the laws of the land which horrifies and arouses the indignation of every normal human being. Every energy of the state is exerted to apprehend and bring him to justice. In the case of the lockout on the one hand, or the strike on the other, a moral crime may be involved which in its consequences may be more terrible by far,

but the government assumes no responsibility. It is a private matter.

GOVERNMENT OF LAW

The government, registering the will of the majority, has by law provided for the peaceful and orderly adjudication of almost every possible human controversy except the industrial controversy. The life, the liberty, the property and the domestic relations of every citizen are subject to adjudication by the orderly processes of the law. The industrial controversy, affecting as it does the most vital interests of labor and capital and of the general public, has been left to be settled by the sword and torch of industrial battle. If democracy, or any other form of orderly government, is to survive, some remedy must be found for these industrial wrongs. Socialism, Communism, Bolshevism, Anarchy,—the arch foes of all present forms of organized government find their sustenance in the poisoned fruits from the fertile fields of industrial controversy.

CLASS RULE

The greatest menace to democracy is the spirit of bolshevism that is abroad in all the democratic countries of the world. Many a man is a bolshevist who probably does not realize it. Class consciousness is the essence of bolshevism. Any man, be he capitalist or pauper, who is willing to sacrifice the interests of the general public to the interest of his own particular class is, in principle, a bolshevist. We have had one glaring

instance of bolshevist principles temporarily dominating the democratic government of our country. An organized but meager minority, said to be composed of about eighty thousand men engaged in an essential industry, so thoroughly organized and so placed as to be able to inflict frightful injury upon the country, demanded the enactment of a law in the interest of their class. Congress and the president were apparently not favorable to the bill and the prospects for its passage were growing darker every hour. Notice was served, publicly and brazenly, that if the bill were not passed, a strike would be called which would utterly paralyze the internal commerce of the country and "would leave the public helpless, the whole people ruined, and all the homes of the land submitted to a danger of the most serious character." [3]

The bill was passed. It became a Federal law and its constitutionality was upheld by the greatest court in the world, principally upon the ground that the Congress had a right to pass the bill to avert such a calamity. Was that democracy? Was that the rule of the majority? Is there no danger from bolshevism in this country? Is "economic pressure" exerted in this fashion permissible under the principles of democracy? If that organized minority had said to the Congress and the president, "If you do not pass this bill and place this law upon the statute books, we will appeal to the general public in the next election to elect a Congress and a president who will pass it," they would have been exercising only their rights as citizens of this great representative democratic republic. But when they threat-

[3] New *v.* Wilson, 243 U. S. 331, 61 Law Ed. 755.

ened to bring a dire calamity upon the country which might have brought sorrow and suffering into every home in the land, they were operating under the principles of bolshevism. Such a rule is not the rule of the majority but the rule of the minority by means of intimidation. It is the threat of "frightfulness." It is, in essence, bolshevism.

THE LIBERTY OF THE INDIVIDUAL

> "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness."

Thus boldly declared the fathers of the republic, and published to the world on July 4, 1776. The desire for individual liberty was an inspiring principle of the American Revolution. For that principle men "pledged their lives, their fortunes, and their sacred honor." For that principle they resolved to "hang together or hang separately." For that principle men in all ages and in every civilized country have performed deeds of valor which have glorified the history of the race. In the liberty to pursue happiness, the individual must be free to choose his own vocation, to shape his own destiny, and to be the master of his own soul. The government must protect him in his right to pursue his chosen vocation, without molestation and without fear. The right to choose his own vocation is inseparably connected with his right to private ownership of property. Liberty without the right to own his own home and to be the master of his own household would

be a hollow mockery. Every citizen must have the right to choose his own domicile, to choose his own companion in that domicile, to provide shelter and protection for his offspring from the vicissitudes of the weather and from the storms of life. The right to own property is the right which enables him to have his own domicile, his own bed upon which to sleep, his own table upon which to eat, the cooking utensils with which to prepare his food, and the tools of his trade by which he may earn his living. If democracy means liberty of the individual, it means the right to life, liberty and the pursuit of happiness and, as a necessary consequence, the right to acquire, own, hold and control property as well as the right to choose his own vocation.

This liberty must, of course, be limited by law, for every man's right leaves off where his neighbor's right begins and no man may so use his own as to injure the public. The government alone has the authority to circumscribe this liberty and to such extent as may be necessary in the promotion of the general welfare. Many illustrations might be given of the governmental right to restrict the individual in the exercise of his liberty. One instance will suffice,—the state says to the individual, "You must send your child to the schools that he may become intelligent and make a good citizen." The state furnishes the school, pays the teacher, provides the books, and the child being to that extent the ward of the state is by the state compelled to attend the school. This is a proper function of government in the protection of the state.

In recent times, however, private organizations

sometimes demand of the individual that he shall join a class, that he shall pay dues, that he shall submit to discipline, that he shall work when the organization permits it, quit when the order comes, and failing whereof he shall be denied the privilege of working at his chosen vocation. So his home may be ruined and his family may suffer. This latter instance is a striking example of "individuals seeking to exercise powers which belong only to government." It is said that private organizations, carrying out the decrees arrived at in secret, frequently exert physical force as against the individual who refuses to be governed and disciplined by the secret tribunal. They exercise the boycott, they ostracize the individual and his family, they brand him "scab," they drive him from the community in disgrace. This is the worst form of tyranny that was ever known within the boundaries of the United States of America. Such powers exercised by private individuals or private organizations are plainly contrary to every principle of democracy and no self-respecting democratic people should tolerate them. Such powers properly belong "only to government."

EQUAL OPPORTUNITY

Equality of opportunity is essential in a democratic state. People in the exercise of individual liberty seek to improve their condition. Ambition impels men to acquire education, to become skilled in their chosen vocation or to accumulate property. While men are, as stated in the Declaration of Independence, "created equal," that equality applies only to their rights. They

are not created equal in their capabilities and so where one man makes little progress, another with only equal opportunity becomes learned in his profession or especially skilled in his work, or develops an acquisitive power and becomes a capitalist. Such equal opportunity is necessary to the progress of the individual, and the progress of the individual is necessary to the progress of the race.

In monarchial countries, and especially in times past, this natural tendency of mankind has enabled individuals who have been favored by nature to establish themselves in an exalted position and by the power thus acquired to perpetuate that position so that it might be passed down from father to son through generations. This results in the caste system and society becomes so stratified that a child born within a certain class must remain in that class throughout his life. Democracy changes all this. Under our democratic form of government, we boast that it is only "three generations from shirt sleeves to shirt sleeves." In other words, an individual born of parents in the humble walks of life finds the opportunity by which he may climb to the more exalted stations, and, conversely, the individual born of parents highly placed in life finds the way clear by which he may descend and his children may be compelled to begin life at the bottom of the scale.

It was this equality of opportunity which enabled Abraham Lincoln to pass from the ranks of manual labor to the highest executive position in a great nation, to become the emancipator of a race and to take a place in history so exalted that it has not been at-

tained by any individual "born to the purple." It is that equality of opportunity which enabled David Lloyd George, starting at the foot of the economic ladder, to become the ruler of the world's greatest empire and to take first rank among the executive statesmen of his generation.

Now, unless this equality of opportunity may be maintained, such a stratification of society will take place that democracy will be superseded by some other system. Democratic government will not put any obstacle in the way to prevent a child born of humble parents from working his way up to the more exalted positions. Private individuals should not be permitted to exercise the power to do so. Any restrictions placed upon the right of youth to learn a trade, to enter a profession, to accumulate property, is a violation of that fundamental principle of democracy. Any rule of any organization which, for instance, arbitrarily limits the number of apprentices who may learn a trade or which prohibits any man from pursuing his chosen vocation in life, is in conflict with this fundamental principle of democracy. A boy may be sent to a vocational school and he may come from that school a highly skilled mechanic. He may come to his home city and may find that he is denied the right to work at his chosen trade or vocation, not by government but by some private organization which assumes the right and authority to say he shall or shall not work in that particular trade or vocation.

SOCIALISM NO REMEDY

We are unmistakably in the midst of a most brutal and destructive industrial warfare. It is world-wide. If prompt and concerted action be not taken, the present struggle may yet prove disastrous to liberty and democracy, and the fruits of our recent military victory may be turned to ashes. In the midst of this warfare, men are looking for some means by which industrial peace may be restored and maintained. *The application and strict enforcement of the principles of industrial justice by the orderly processes of the law will restore and maintain industrial peace.* There is no other remedy. Socialism is wholly impractical. It may be that in some Golden Age of the future humanity may become perfect, selfishness may die out of the human heart, and everybody may love his neighbor as himself. In that time perhaps socialism will function democratically.

At the present time it is impossible. The sacrifice of untold millions of brave men fighting for democracy has removed, at least for the present, the danger of the despotism of monarchy. We believe the sacrifice was warranted in order to rid the world of that danger. Yet none will deny that civilization has steadily advanced even under monarchial governments. Great institutions of learning have been firmly established; emperors and kings have been enthusiastic and consistent patrons of the arts and sciences; the most magnificent buildings have been erected; the most beautiful pictures have been painted; the most heavenly music has been given to the world; the most inspiring poems

have been written, and literature and religion have flourished to enlighten and ennoble the race—all under the influence and by the encouragement and support of monarchial forms of government.

On the other hand, socialism in all its phases, including the later development of bolshevism, has retarded or destroyed civilization; it has developed the worst forms of tyranny and oppression; it has scoffed at religion and desecrated shrines and sanctuaries; it has smothered human genius and prevented progress in the arts and sciences; it has no literature worthy of the name; it has accomplished no permanent good, except as it has served as a horrible example. Its ascendancy has resulted in the unbridling of the basest passions of men and in crimes unspeakable; it has ever been and it is now the implacable foe of all that democracy teaches and that democratic America holds dear. The utter collapse of all that was civilization in Russia is no novel result of the rule of socialism. It is typical.

Socialists themselves are the best proof that the socialistic scheme is worthless. The evident insincerity of the leaders stands as a constant reminder that socialism is not only impractical but dangerous. If the intellectual leaders of socialism believed in their own doctrine, they would, like the ancient Christians, demonstrate it in their lives. The socialist intellectuals, instead of drawing salaries from the capitalistic class or from the government, or engaging in business as capitalists themselves, or profiting by the gullibility of their ignorant followers, would be in the socialist colonies demonstrating by their deeds as well as by their words that socialism means what it pretends and

that it affords relief from the alleged evils of the capitalistic system. Under the laws of our country there is nothing to prevent persons who believe in socialism from joining themselves together in socialistic communities and demonstrating the principles which they so vociferously propose. Until that is done socialism will be the mere dream of impractical theorists or the scheme of unscrupulous leaders who may use it to further their own selfish ends, or the means for obtaining a little cheap notoriety by mediocrities who cannot achieve honorable renown.

Americans, in fact all the English-speaking peoples, are committed to the liberty and justice exemplified in democratic forms of government. These should be defended at all hazards, but if it becomes necessary to choose between the two evils of monarchy and socialism, the choice immediately and emphatically should be—monarchy.

THE BUSINESS CORPORATION AND THE LABOR UNION

Steam began it and steel, cement, electricity and gasoline completed a *world revolution in industry*. Great machines driven by forces of nature, harnessed by human inventions, have changed the habits, the customs, and the very life of the race. In modern industry immense aggregations of wealth, as well as multitudes of workers, must necessarily be employed. The business corporation, by means of which very many individuals may safely invest their savings or their capital in a single enterprise, is a modern necessity. Correspondingly, the great numbers of workers employed, because of their individual weakness and lack of personal touch

with their powerful employer, are compelled to organize in their own protection. And so the labor union takes its place in industry as a correlative of the corporation. In the essential industries the individual employer who knows his employees by name, who is in constant touch with them and understands them, has almost disappeared. Practically all of the big business of the country is done through the medium of the corporation whose capital stock is owned by large numbers of people. Now, the management and direction of the tremendous business enterprises owned by corporations places far-reaching powers in the hands of a small number of directors or of the president or manager of the institution. In the presence of such immense power, the individual worker is helpless. Only by mass action can he meet his employer upon anything approaching a plane of equality. Therefore, the labor union is legitimate and, in fact, necessary.

Here then is a conflict of interest. The manager of the plant, representing the board of directors, and indirectly hundreds and perhaps thousands of stockholders, has constantly in mind, and properly so, the one idea of so conducting the business as to pay expenses, provide for maintenance and expansion, and earn dividends for the stockholders. On the other hand, the president or other managing officer of the unionized employees of the plant has an interest to serve. As the official representative of the workers he must keep constantly in mind the quality of the wage, the length of the working day, and the betterment of working conditions. This conflict of interest involves large sums of money to the immediate parties; it involves,

so far as labor is concerned, priceless interests in the way of health and living and working conditions; but above and beyond all is the interest of the general public, which depends upon the business corporation and the labor union for the necessaries of life, which must be produced by their joint efforts.

THE TERROR OF UNEMPLOYMENT

A professional man in the prime of middle life was taken sick. He had high fever. He became delirious. He was living in his own home which was elegant and commodious. He was surrounded by every comfort and convenience of modern civilization. Yet in his delirium he was constantly asking persons at his bedside for work. "Can't you give me a job?" he would say. His distress was pitiful to see. For hours at a time he was harassed with this illusion caused by the fever. After his recovery, when he was told of the circumstance, he explained that in his youth there had been a time when he was unemployed. His meager savings were soon spent for food. He was unable to find employment. For two weeks he had almost starved himself in his effort to conserve the little balance of his funds. At last, penniless, for three days he walked in search of work, too proud to beg and wholly without food. He had a ringing in his ears, an unsteadiness of vision, a throbbing of the head, the depression of spirit which constantly suggested self-destruction such as described by Victor Hugo in *Les Miserables*. He said that many times during the twenty-five years intervening, in his sleep, the scenes of

that experience came to him as a nightmare. At last the delirium of fever caused him to make his secret known to his family and his friends. At the time of this fearful experience he had no dependents. What must be the terror of unemployment to the head of a family when he realizes that his wife and children must suffer with him? Is it any wonder that the honest but jobless man should curse the present industrial system? Does government owe no duty to the man who is willing to work but has no opportunity? What is the measure of the state's responsibility to the helpless family of the jobless man?

THE INVESTOR'S INTEREST AND THE WORKER'S WAGE

Capital invested in the securities of public utilities and common carriers is by law protected in its right to a fair return. The Interstate Commerce Commission and the various state commissions are by statute required, in the fixing of rates and in the exercise of other regulatory powers, to protect the investment by such rates and such regulations as will permit earnings sufficient to provide a fair return upon the property used and useful in the business. The general laws are so framed and so administered that the property of the citizen is surrounded with the greatest protection ever known among men,—the protection afforded by government through the instrumentalities of law, of peace officers, and of courts,—all of which is necessary in the protection of life, liberty and property. The rights of property, as stated before, are so closely connected with life, liberty, and the pursuit of happiness that

there can be no segregation or separation of any kind. But the right to possess and enjoy property is also inseparably connected with the right to acquire it in any lawful manner. By labor,—with hand or brain,—men must acquire property. "In the sweat of thy face shalt thou eat bread." (Gen. 3:19). Therefore, the right to labor is the primary right. Labor is the foundation upon which must be built every man's private fortune. As a property right alone then the job and the wage of the worker should be protected by law. This protection should be as ample as is possible consistent with economic wisdom. The worker himself as a citizen is entitled to such protection. The state does not protect a return upon every investment of capital. A foolish investment falls outside the protection of the law. The state cannot protect the wage of the idler, the slacker, or the misfit in industry. But the pretended right of the employer to get his labor upon the "labor market" at the lowest possible wage, to take advantage of the necessities of the workers at the time of a glut in the "market" caused by economic depression, if a right at all, is subject to many limitations. The worker's contribution to society is his good health, his strong muscle, his skill and fidelity. His contribution is as valuable as the capital of his employer. Having made such an important contribution to the public, his job and his wage should be protected by law. Until such protection is given the wage earner, the government will not have fulfilled its obligation in this regard. The old adage, "The world owes every man a living," is bad morally as well as economically; but *civilization does owe to every man a fair opportunity to earn a living.*

But the interest of the worker and of the investor in the essential industries is inseparably connected with the interest of the general public. Upon the continuous and efficient operation of these industries, the public must depend for the necessaries and comforts of life. It is, therefore, a matter of public interest that skilled and faithful workers and ample capital should be always available in these industries. In order to insure the proper operation of such industries, a fair return should be allowed to capital and a fair wage must be paid and healthful and moral surroundings provided for labor. Otherwise workers of the highest skill and fidelity will leave the employment of such institutions and seek a better wage and better conditions offered by enterprises of a private nature not essential to the public welfare and capital likewise will seek other fields for investment. Wholly aside, then, from the purely altruistic considerations which are always so important in wage matters, the protection of the public requires a fair wage and healthful and moral surroundings in the essential industries.

There is another public interest more vital perhaps and yet an interest which seems to be generally overlooked. An inadequate wage, long hours of labor, and unsanitary working conditions, if long continued, work irreparable injury to the health, physique and morale of the workers and their families. This causes rapid deterioration of the race and a corresponding economic loss which the nation at large must suffer. The moral and physical decay of the working population, which must result from such evils, is inseparably connected with the decay of the nation as a whole. In

a democratic government such as ours, however, the chief injury to the nation is found in the decay of the morale and the patriotism of that portion of the population directly affected by such adverse conditions. No democratic government can long exist which does not protect the workers against these evils. The interest and principal of the investor, the wage and the job of the worker,—all property rights,—are entitled to the equal protection of the law.

THE CITIZEN OF THE FUTURE

Self-preservation is said to be the "first law of nature." Self-perpetuation should be the first rule of government. Democratic government depends in the final test wholly upon the uprightness and intelligence of its citizens. The government of the United States, and of the various states, the president, Congress, the United States courts, the various departments, the governors of the states, the legislatures, the state courts,—all the instrumentalities of government exist and are maintained for the one prime purpose of making it possible that every child born within the boundaries of the Republic shall be reared under healthful and moral surroundings, schooled under the direction of the state, and become a patriotic, moral and upright citizen. If there be within the confines of this country one child, who by reason of the poverty or unemployment of its natural protector,—its parent,—must go to bed hungry at night, must be nurtured inadequately in an immoral or unsanitary home, must have its body and soul stunted or warped by reason of such adverse condi-

tions, to that extent at least organized government, organized religion, organized philanthropy, organized business, organized labor,—all have miserably failed.

THE TRIUMPH OF DEMOCRACY

The rule of the majority,—

The willing submission of the minority to that rule,—

The largest liberty of the individual consistent with the general welfare,—

Equality of opportunity,—

These are the four cornerstones of democracy's foundation.

If we believe in individual liberty and equality of opportunity, if we believe in the principles so boldly announced in the Declaration of Independence, if we believe in making the world safe for democracy, if we believe in making democracy triumphant in the United States of America,—we must fight! The struggle will not be upon the battlefield, or upon the sea, or under the sea, or in the air, but at the ballot box, in the halls of legislation, in the forum of public opinion. A government of *law*, not a government of *men* must be our aim. *Private individuals or organizations must not exercise the powers which belong "only to government."* Justice Brewer, formerly a member of the Kansas Bar, formerly a justice of the Supreme Court of Kansas, late a justice of the Supreme Court of the United States, *in re* Debs (158 U. S. 564, 39 Law Ed. 1092) clearly states one of the principles which must be applied to the solution of the problems of the day if

democracy is to survive. The words of the justice should go down in history with the definition of democracy by Abraham Lincoln at Gettysburg.

THE NEED OF LEGISLATION

In the Debs case (158 U. S. 564) the Supreme Court of the United States upheld the power of the courts on application of the public to enjoin persons from interfering with interstate commerce by the method of the strike, intimidation and violence. There have been many other instances in which courts of general jurisdiction have enjoined laboring men and labor leaders from similar interference with business in which the public is interested. There have also been numerous instances in which courts have prevented capitalists from unlawful acts in regard to the conduct of similar business. The injunction method has met with violent opposition from labor leaders. This opposition has found considerable support with the general public. Some of the states have laws limiting the power of courts to grant injunctions against labor. The Federal Government in the Clayton Act did the same thing. The legislature of the state of Kansas passed such a law. Now, the Debs case was decided twenty-five years ago. The right to use the injunction to prevent interference by strike with businesses or industries which affect the public was very clearly recognized, and yet no general good result was obtained by the injunction method.

There has been no law, no tribunal and no legal procedure by which the controversy between capital and

labor could be adjudicated. Employing capital has had the benefit of such tribunals and such laws for its protection. In case of public utilities and common carriers, at least, if the rates were too low or the burdens too heavy, if the rules and practices required by the public were unreasonable, the courts, the interstate commerce commission, and the state public utilities and public service commissions were open to capital and had power and authority to grant relief. Employers in other lines could, at least, cease operations when the business became unprofitable. They could, and no doubt in many cases did, by combination by means of their various organizations regulate the price themselves to suit the conditions surrounding production and marketing. On the other hand, labor was left without any recourse by legal procedure. There was no industrial law nor industrial code which enabled labor to apply for relief upon the ground that the wage was too low or the working conditions bad. If the plant shut down, throwing workmen out of employment, there was no tribunal into which the unemployed workman might go and ask for a redress of his grievances. If, in the course of operation, employing capital concluded as a means of adding to its dividends to reduce the wage, it had the power to do so. If it decided to lengthen the day for the same purpose, it could do so and there was no legal way by which labor could be heard. The strike or the boycott was the only means left to labor by which it might redress its grievances.

Some feeble attempts to establish justice by legislation have been made. In some states the employment

of young children in certain industries has been prohibited. We have some laws fixing the hours of labor for women and children and in some states a minimum wage for women. We have provided for the inspection of mines and factories and have sanitary and safety precautions. We have our national safety appliance act which has been copied by the states to some extent. We have workmen's compensation acts by which we seek to relieve the state of the burden of caring for the dependent or injured workmen during their incapacity to work, and for at least temporary care of widows and orphans of such as may be killed in the course of employment. Employing capital has resisted the enactment of each of these salutary laws. In many instances employing capital has refused to obey such laws until compelled to do so by the courts. The laws themselves are very difficult of enforcement and in many instances the laborers affected are timid in seeking to obtain the benefits of such laws fearing discharge or other discrimination against them. Notwithstanding all these provisions of the law, the year 1919 witnessed the greatest number of strikes and the greatest loss from strikes ever known in America. Many of these strikes were accompanied by violations of the statutes, such as disturbances of the peace, assaults upon individuals, and the destruction of property. The courts of general jurisdiction and the laws of the land failed to prevent these evils. The method of injunction in some instances, perhaps, minimized the public suffering which might have resulted, but that is the best that can be said for that method of procedure in industrial controversies. Public sentiment, even at the present

time, after all the suffering which has resulted in recent years from industrial warfare, would not approve of the use of the injunction as a mere bludgeon against labor engaged in the struggle to better its condition. For that reason, among other numerous reasons, some adequate remedy should be offered to labor by which it may secure a fair measure of justice. Some new legislation seems necessary. Some tribunal should be established, impartial in its nature, to which labor may go with its grievances. An industrial code should be enacted which would provide a remedy for the evils of unemployment, underpay, unreasonable working hours, and unsanitary conditions. Some means must be provided by which it will be possible to *remove the cause* of industrial unrest and make the strike and the boycott unnecessary. Trial of industrial disputes by gauge of battle should be prohibited and in place thereof should be established a safe, sane and civilized remedy for industrial wrongs. The industrial controversy is subject to adjudication. The tribunal by which adjudication may be made must be impartial. Access to that tribunal must be free. The adjudication must be made primarily for the protection of the public and the public should pay the bills. The laboring man should not be required to incur heavy expenses in order to secure a fair and impartial settlement of his controversy with his employer. *If we prohibit the strike and the boycott, we must substitute therefor the orderly processes of the law.* By law we must protect the wage of the worker equally with the interest of the investor,—the workers' job and the employer's investment must enjoy the equal protection of the law.

THE COURTS

It happened on a passenger train running at full speed over the prairies of Kansas. The conductor had finished his work and sat down to rest beside a passenger who was an old acquaintance. "I see," said the conductor, "that they are talking of passing a law creating a court to prevent strikes and settle labor disputes."

"Yes," said his companion. "What do you think about it?"

"Oh, I don't think much of it. The trouble is labor don't have no confidence in courts."

"Well," said his friend, "what do you yourself think about it, Jim?"

"I am a good deal like the rest of them; I don't have much confidence in courts either."

"Well, now, Jim," said his companion, "I have known you for twenty-five years; you were born in Kansas and your parents came from Ohio, and I happen to know that you are a good citizen. Now, let me ask you a few questions. You believe in the government of the United States, don't you?"

"Sure," said Jim.

"You believe that the government of the United States is the best government in the world, don't you?"

"You bet I do. I stand up for the Stars and Stripes."

"Well, you also believe in the government of the state of Kansas, don't you?"

"Yes, sir; I put Kansas above any of them."

"Well, now, you know of course, that the government under which we live is divided by constitutional provision into three departments,—the executive, the legislative, and the judicial. The executive is composed of the president of the United States, the cabinet heads, etc., the governors of the various states and the heads of state departments; the legislative is composed of the congress of the United States and the state legislatures; and the judicial is composed of the Supreme Court and the inferior courts of the United States, and the Supreme Court and inferior courts of the various states."

"Yes, I understand all that; remember when we read that in our history books at school."

"Well, all right, then. Now, let's take the three departments and see where we stand. We haven't always been entirely satisfied with the occupants of the White House, have we?"

"No, we have had some bum deals from the White House."

"And here in Kansas we, at times, have been displeased with the governors we have had?"

"Yes, I remember three or four since I have been old enough to notice such things that didn't amount to much according to my way of thinking."

"Well, how about the legislative branch, the Congress of the United States and the legislatures of the various states?"

"Oh, sometimes they are pretty good; but there have been times when I would have been willing to see them all abolished, they passed such bum laws. They passed some good ones at times. We have some pretty good laws in this country."

"Well, now, let's take the judicial branch of the government; have you ever had a lawsuit?"

"No, I never had a lawsuit and never was a witness in court, but once, and never did serve on a jury."

"Well, what do you think about the Supreme Court of the state of Kansas?"

"Oh, all right, as far as I know; don't know anything about it."

"Well, what do you think about the Supreme Court of the United States?"

"Well, I think that was a mighty good decision in the railroad men's case, they called it the Adamson Law case. I like that."

"Well, what have you got against the courts?"

"Oh, generally, I think they are against labor."

"Don't the courts interpret and assist in the enforcement of the laws that are made by the legislature?"

"Yes, I reckon that's right."

"Now, Jim, taking it all in all, would you say that the executive branch of the government is superior to the judicial branch?"

"No, I guess not; no, I don't think so."

"Would you say that the legislative branch,—congress and the state legislatures,—is superior in any way, or more just and reasonable, or has shown greater wisdom than the judicial branch of the government?"

"No, couldn't say that either."

"Now, look here, Jim, don't you see that if you are for the government of the United States, if you are in favor of the government of the state of Kansas at all, you've got to say that you are in favor of the courts,

that they are proper and legitimate, a part of the government, and we couldn't have the government without them?"

"Yes, sir, Bill, I will have to admit it. I think the judicial branch of this government stands higher for fairness and justice and wisdom than either one of the other two. I am not going to cuss the courts any more."

"Well, that's good, Jim, I am glad you feel that way. Now, I want to tell you something. The laboring people of the United States, at least organized labor to some extent has been led astray and had its loyalty somewhat depreciated by the radical leadership which has forced itself upon organized labor within the last twenty years. A good many of these leaders, Jim, who are "cussing the courts" and trying to stir up strife between working people and employers, don't believe in a democratic form of government at all. They are red-card socialists, and bolshevists, a great many of them are foreigners and a dangerous element, and loyal American laboring men ought to steer clear of them."

"Well, Bill, you know I am a union man but you know good and well that I'm no dynamiter. I believe in law and law enforcement."

It is the glory of Anglo-Saxon jurisprudence,—first that it affords a remedy for every justiciable wrong; and, second, that through its instrumentalities justice is administered impartially in accordance with established rules, not by the caprice of the judge. Respect for courts is thoroughly ingrained in the nature of all English speaking peoples. No invidious com-

parison should be made as among the three departments of government,—executive, legislative, and judicial. Each is an integral part of one harmonious whole. Each is necessary. Each has its important functions to perform. No man who believes in our form of government would contend that any one of the three could be dispensed with. But especially in America, with our written constitutions, containing as they do the settled conviction of the people, the courts must perform, in many respects, the most important function of government.

The courts interpret the laws as they are enacted by the legislative assemblies, and determine whether such laws are in harmony with the constitution, which is the highest law. Some there are who deride the power of the courts to declare unconstitutional any legislative act. Such men surely cannot be thoroughly conversant with the rules and practices of legislatures, with the character and caliber of legislators, with the considerations that sometimes prompt legislative action, with the political and economic influences which often impel legislative majorities. Men who are acquainted with our legislative history will hesitate before depriving the courts of this authority. The acts of the executive branch of the government must be subject to review by the courts to bring such acts in harmony with the duties and functions prescribed for the various officials by the constitution and the laws. There can be no substitute for the courts. No government such as ours can function without them. In the administration of justice between and among citizens, the courts perform a duty which is of the utmost importance. With

every advance in civilization comes greater complexity in the relations among men. It was said by an ancient law writer that it is impossible to conceive of any controversy which might arise among men but that a method of adjudication could be found in the provisions of the common law. For many generations the courts in all the English speaking countries of the world have performed their functions to the general satisfaction of the people. There is greater respect for the courts today perhaps than there was one hundred years ago. It is a fact generally recognized that the courts are more independent of outside influence than either of the other branches of government. This independence of the judiciary is its chief virtue, and it is the only guarantee of every man's liberty. Sir Matthew Hale, the English judge, two hundred and sixty years ago, in the time of Charles II, stating that in matters affecting the public interest the king himself stands before the law the equal only of his humblest subject; Chief Justice Waite in 1877 declaring the same principle as it adversely affected tremendous investments of money and great commercial interests; Justice Brewer in 1895 declaring the authority of the law as against powerful combinations of men who were "attempting to exercise powers which belong only to government;" and Chief Justice White in his strong statement in 1916, upholding the right of the representatives of the people to protect the public interest in case of emergency,—all are shining examples of the independence of the judiciary and constant reminders that the liberties of the people are safe in the hands of the courts.

THE PSYCHOLOGY OF THE PRESENT LABOR LEADERSHIP

Beyond doubt, the average working man is as good a citizen as the average business man. No general condemnation of any particular class or group of citizens is justifiable. There is something strange, however, in the attitude toward government of the present labor leadership. Among labor leaders from the highest to the lowest, there seems to be a hostility toward government, toward the courts, toward any law which attempts to regulate or limit the power of the labor officials. Recently it was reported that one of the mightiest of the mighty leaders of the American Federation of Labor declared to a committee of Congress that any Federal law placing limitations on the "right to strike" would not be obeyed by labor. In Kansas one of the leaders of an organized minority of the people of this state boldly but vocally defies the law and the courts, and proclaims his right as a representative of working men to violate the law if necessary to insure what he calls "justice to labor." He arrogates to himself the authority to adjudge all such matters. Those men and men of their kind seem to be imbued with the idea that organized labor although in the United States of America is not of the United States of America; that organized labor is separate and apart from the general citizenship; that it is not required to obey the laws which are enforceable against other people but that it has the power and the right to choose which laws it will obey and which it will not; that it may invoke the protection of the laws when it sees fit and violate them when its interest may so be served.

Under such leadership nothing but disaster can result to organized labor. Not all of the present leaders are of such type. The labor leader of the future must be a man of a very different type. He must be a law-abiding citizen from choice and not from compulsion. He must be diplomatic. He must rely upon the rights of labor, not upon its might in mass action. He must meet with the superintendent of the plant on equal terms. He must represent his co-workers as an ambassador interested only in the results to be attained in his efforts to secure a fair wage and fair working conditions for his fellows. Democracy will survive. If the labor union is to continue, the attitude of organized labor toward law and government as represented by many of its present leaders must change. Organized capital *and* organized labor must be subservient to law.

NOT HASTY LEGISLATION

This country has suffered much in the past by reason of what is called "hasty legislation." We have a habit of "waiting until the horse is stolen before locking the stable door," or to make the old adage more modern, "waiting until after the car is taken before closing the garage." The impression seems to be prevalent that the Kansas Industrial Act is an example of such hasty legislation. That impression is incorrect.

For many years past, men have been saying that there should be some legal means of controlling strikes, lockouts, and the boycott. Men prominent in public affairs have from time to time said that there ought to be some way of adjusting these industrial disputes under the supervision of the government. Some men

have even asserted that there should be courts established into which such controversies could be taken for settlement. No doubt thousands of people have had such ideas. Until the enactment of the Kansas Industrial Law, no government in the world had undertaken to *adjudicate* industrial controversies. Australia, New Zealand, the United Kingdom, Massachusetts, and perhaps other states had enacted various labor laws providing for the adjustment of industrial controversies, but they were all based upon the principle of arbitration, compulsory or voluntary. The United States government, during the Great War, provided means by which arbitration was encouraged. No doubt these arbitration tribunals have been of considerable value to the countries in which they have been established, but it cannot be denied that arbitration has failed to meet the requirements of the day. Each party to the dispute is represented by arbiters of its choice and thus the matter starts out with a biased tribunal. The arbiter chosen by labor is always a labor leader or some other person thoroughly committed to labor's views. The arbiter chosen by capital, likewise, is thoroughly committed to the capitalistic view. The umpire who must be chosen is really the sole authority. Each group representative is, in fact, an advocate. Each group demands "everything in sight." The best that can be hoped for in such a situation is a "trade" or a compromise. In a government of law no man should be *compelled* to accept the compromise of his rights by a biased tribunal. He is entitled to an adjudication by an impartial tribunal.

Henry Suzzalo, Ph. D., president of the University

of the State of Washington, who served the government so efficiently during the Great War as an arbiter in labor controversies, says that the position of the "neutral leader" in the arbitration of labor controversies is the "hardest position in the world to occupy." He says: "I have sat as a judge on an arbitration board and I want to say that I don't believe there are enough people yet developed in the United States to make good neutral members of arbitration boards. . . . I don't believe that you can get a compulsory arbitration board to work successfully until you develop a body of principles for the settlement of economic disputes and until you develop a body of liberal citizens who can be impartial and who may be just as judges." If a man of President Suzzalo's high character, ripe scholarship, and successful experience finds it so difficult, how can it be expected that arbitration can be successful in times of great economic and industrial disturbances?

The bill which became the Kansas Industrial Act was written after a very careful study of the New Zealand, Australian, Canadian, British and Massachusetts arbitration laws and after a careful study of the results obtained through the medium of such laws. The Kansas Act is a complete departure from all the other acts mentioned. While the Kansas law favors, and the Kansas Industrial Court has encouraged, voluntary arbitration and conciliation within the industry, when these fail and industrial warfare is imminent, then the Kansas law steps in and provides for adjudication. The Kansas Court of Industrial Relations is emphatically not an arbitration tribunal and the entire

act is based upon the principle of adjudication,—not arbitration. We, in Kansas, for the first time have proposed the legal principles upon which industrial disputes may be adjudicated and have enacted a law which creates the kind of tribunal and establishes a comprehensive code of procedure by which such adjudication may be had. In other words,—we, in Kansas, have taken the abstract propositions which have been made and the general conversations which have occurred through years upon this important subject, and have reduced the whole matter to a concrete legal enactment based upon what we regard as the proper legal principles and have provided the court and the code of procedure necessary to accomplish the result desired. In this respect Kansas is entitled to commendation or condemnation, depending upon the mental attitude of the party discussing the subject.

The present law has been in contemplation and has been given much study running over a period of at least ten years. Seven years before its enactment by the Kansas legislature the fundamental legal principles of the present act were stated in a public address to a Kansas civic body. In the month of October, 1919, almost every detail of the present law was concretely stated in a public discourse at a Rotary Club luncheon. The month following (November, 1919) the nation-wide coal strike occurred. The cessation of coal mining extended to the mines of Kansas. Being a prairie state, Kansas suffered not only in her cities but upon her farms. This strike was made the occasion for the calling of a special session of the legislature. The strike, then, was the occasion but it was not the cause

of the preparation and enactment of the law as it now stands. The bill was drafted with painstaking care by the use of the Rotary speech above mentioned as an outline. After the preparation of the first draft of the bill, it was presented for criticism and suggestion to a number of prominent lawyers of our state. The critics were so divided in their criticism that little change was occasioned thereby. The bill practically as originally drafted was placed in the hands of members of the two Houses of the legislature and was introduced simultaneously as bill No. 1 in each House.

The Kansas legislature of 1919 deserves especial mention. It was a wartime legislature. Its membership was elected before the Armistice. It was composed of strong men. Most of them, in the nature of the case, were men in middle life as the young fellows were in the service of the government. Some of the strongest lawyers, bankers, business men, some of the most substantial farmers in the state were members of that legislature. Five members were veterans of the Civil War. The special session opened on January 5, 1920. There was a spirit of determination manifest, but there was also a spirit of altruism. Party "dickering" was unknown. Factionalism did not appear. There was a spirit of coöperation which was little less than marvelous. The House of Representatives went into committee of the whole, invited in the Senate and held public discussions for a period of a week or more, inviting in big representatives of labor to discuss the bill. Frank P. Walsh, attorney for the Railroad Brotherhoods, a man of international reputation, who had been a member of the War Labor Board of the

government with ex-President Taft and others, spent one entire day in opposing the bill. Other labor leaders of little less note were heard in opposition. Persons representing the general public spoke in favor of the Act, and the general attorney for the Employers' Association of Kansas opposed it in a strong argument. Organized labor, therefore, and organized capital representing the employers of labor, were both represented in the discussion and both opposed the bill. After this discussion the House of Representatives continued in committee of the whole considering the bill. Naturally the lawyer members took a prominent part in the discussions, but bankers, business men and farmers also expressed themselves freely in the two or three weeks' debate. In the Senate it was referred to the judiciary committee. That committee was composed of lawyers, all of whom were men of fine ability and some of whom were the most prominent in the state. The Senate judiciary committee had the bill under consideration, sitting for nine consecutive days. Many changes in verbiage were made and the bill was undoubtedly greatly improved by these criticisms, conferences, discussions, and considerations, but none of the fundamental features were eliminated or materially changed.

The bill was passed by both Houses with practical unanimity. This was not because it had been so carefully prepared prior to the session, nor because of the stirring and eloquent appeal of the Governor, although these matters, no doubt, had their influence. The bill was passed because the legislators individually, after the most careful study, were convinced that such a law

would protect the general public from the evils of industrial warfare and give justice to capital and labor. The law today in all essential respects is as originally drafted and introduced into the two houses. It is not "hasty legislation." It is our best effort toward legislation of this kind. It may have faults and weaknesses, which experience will develop, and which will necessitate changes in the future, but such faults and weaknesses are not the results of haste in the preparation or passage of the Act.

THE TEN (INDUSTRIAL) COMMANDMENTS

When the discussion of the bill, which afterward became the Kansas industrial court law, was at its height in the special session of the legislature, the following ten industrial commandments, formulated by W. L. Huggins, the first presiding judge of the Court of Industrial Relations, were printed in the Topeka *Daily Capital* and a copy of the paper was placed upon the desk of each member of the house and senate. It is claimed that the spirit and substance of the law is tersely stated in these commandments.

To the Worker

1. Thou shalt not place the union card above our country's flag.
2. Thou shalt not deny to any man, at any time, in any place, the right to work as a free man and to receive wages as such.
3. Thou shalt not demand a good day's wage in return for a bad day's service.

To the Employer

4. Thou shalt pay a fair wage to each and every of thy workers.
5. Thou shalt furnish a safe and healthful place in which, and safe appliances with which, thy employees may work.

6. Thou shalt operate thy business as continuously as its nature will permit, to the end that labor shall be regularly employed and that the public may not suffer for the living necessities furnished through the medium of thy activities.

7. Thou shalt not demand extortionate profits. Thou shalt be content with a fair return upon thy investment used and useful in thy business.

To Every Citizen

8. Thou shalt willingly pay a fair price for all commodities required by thee from Labor and Capital, to the end that Labor shall have a just reward and Capital a fair return.

9. Thou shalt pay thy taxes cheerfully and honestly, to the end that the obligations of the state to all its people may be promptly and properly fulfilled, liberty and justice safeguarded and the general welfare assured.

10. Thou shalt honor and love thy government, for it is the people's government, the best ever devised by man, and there is none other like it in all the world.

PART TWO

A FEW OF THE FUNDAMENTALS OF THE KANSAS INDUSTRIAL COURT LAW

The Kansas Industrial Act is composed of thirty sections. Perhaps it would not be improper to call it the "Industrial Code." No effort will be made here to analyze all the provisions of the Act but those sections and parts which seem to be fundamental will be discussed briefly. It must be kept in mind that the prime purpose of the Act is the protection of the public against the evils of industrial warfare. Whatever restrictions may be placed upon capital or labor, or whatever powers or prerogatives may be conferred upon either, are incidental to the main purpose.

THE LEGISLATIVE DECLARATION

Section 3a of the law[4] should be very carefully studied by all who desire to become acquainted with the purpose and intent of the legislation. By section 3a the legislature determines and declares certain businesses to be affected with a public interest and therefore subject to supervision by the state as provided in the Act. Technical lawyers have urged that the legislature has not the power or authority to declare any

[4] See appendix, p. 141.

business impressed with a public interest, and that only the courts may place such a burden upon any industry. This point is perhaps well taken. However, in this connection, attention is called to the following statement in the case of American Coal Mining Company *vs.* Special Coal and Food Commission, 268 Fed. 563:

> "Now, is there any rule for determining when the federal courts shall interfere, under the Fourteenth Amendment, with a state statute enacted under the police power? Yes. The best analogy, to my mind, is the basis on which an appellate court interferes with the verdict of a jury. If there is no basis on which a reasonable man could arrive at the result, it is set aside. Otherwise, it is not, even though the court sitting as a jury might have found the facts the other way.
>
> "It is only when either no basis of fact exists on which to lay the legislature's finding, or when the remedy prescribed by the legislature has no possible relevant bearing or connection with the evil to be cured, that the statute is set aside."

Attention is also called to the recent case of Block *vs.* Hirsh, decided by the United States Supreme Court, April 18, 1921, in which is found the following language:

> "But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect."

The principal object of writing Section 3a into the law was that it might be considered by the courts as a clear indication of the purpose and intent of the legislature in the enactment of the law as a whole. It will

be noted that some industries not heretofore regarded as impressed with a public interest are declared to be so affected. If the courts of last resort should hold that, as a matter of law, any one of the industries enumerated in Section 3a is so private in its nature as that it is not affected with a public interest, then the Kansas law, as to that industry, would fail. This principle of public interest is one of the fundamentals upon which the Kansas Industrial Act must depend in the final test.

THE PUBLIC'S INTEREST STATED AND DEFINED

The case of Munn *vs.* People of the State of Illinois [5] is one of the cases which was very carefully studied before the preparation of the first draft of the bill which afterward became the Kansas Industrial Law. Especial attention is called to the quotation in the Munn Case from Sir Matthew Hale's "De Portibus Maris":

> "A man, for his own private advantage, may in a port or town, set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage, for he doth no more than is lawful for any man to do, viz.: makes the most of his own. . . . If the king or subject have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the Queen, . . . or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc.,

[5] 94 U. S. 113; U. S. Sup. Court 24 Law Ed., p. 77.

neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the King's license or charter. For now the wharf and crane and other conveniences are affected with a public interest, and they cease to be *juris privati* only; as if a man set out a street in new building on his own land, it is now no longer bare private interest but is affected by a public interest." [6]

The principle of public interest stated so admirably and so long ago by Sir Matthew Hale is the principle upon which we have builded our entire system of state regulation of common carriers and of public utilities. As public necessity has required it, the legislatures and courts have considered the same principle in relation to the supervision and regulation of other businesses which affect the public as in the case of fire and life insurance, public health regulations, safety appliance acts, workmen's compensation, sanitary regulations in factories and mines, minimum wages for women and children, the prohibition of the employment of children in certain industries, and other matters of similar import. The principle has been extended from time to time as public necessity required it. Today we not only fix the rates which must be charged by common carriers and public utilities, but we prescribe the quality

[6] It is recommended that the Munn Case (94 U. S. 278, 24 Law Ed. 77) and the large number of authorities there cited should be studied carefully. See also German Alliance Insurance Company *v.* Lewis, 233 U. S. 389, U. S. Sup. Court 58 Law Ed., p. 1011, and cases there cited; Budd *v.* People of New York, 143 U. S. 518, U. S. Sup. Court 36 Law Ed. 247, and cases there cited; Julius Block *v.* Louis Hirsh, U. S. Sup. Court, April 18, 1921, and cases there cited; Marcus Brown Holdings Company *v.* Marcus Feldman, Benj. Schwartz, et al., U. S. Sup. Court, April 18, 1921, and cases there cited; American Coal Mining Co. *v.* Special Coal and Food Com., 268 Fed. 563.

and compel the continuity of their service. As civilization has advanced, as our population has increased, as inventions and industrial developments have changed our living conditions and our customs, we have from time to time, as heretofore indicated, added to the list of businesses and vocations which have been declared by courts to be affected by and with a public interest.

THE ANCIENT LANDMARKS OF THE COMMON LAW

The legislature of the state of Kansas under the Industrial Act has declared by Section 3a that the operation of the businesses of (1) manufacturing or preparing food products, (2) the manufacture of clothing, (3) the mining or production of fuel, (4) the transportation of food products, clothing and fuel, and (5) public utilities and common-carriers are affected with a public interest. It will be seen that the legislature has attempted to add to the list of industries formerly regarded by legislatures and courts as affected with a public interest, at least three others, to-wit: the manufacture of food, the manufacture of clothing, and the mining or production of fuel.

The legislature, in the act under discussion, adhered strictly to established principles and was guided by the ancient landmarks of the law. Kansas, by legislative enactment, in its early history, declared:

> "The common law of England and all statutes and acts of Parliament in aid thereof, made prior to the fourth year of James the First, and which are of a general nature, not local to that kingdom and not repugnant to or inconsistent with the constitution of the

United States and the act entitled 'an act to organize the Territory of Nebraska and Kansas' or any statute law which may from time to time be made or passed by this or any subsequent Legislative Assembly of the Territory of Kansas, shall be the rule of action and decision in the Territory, any law, custom or usage to the contrary notwithstanding." [7]

It has been said by eminent American jurists that:

"The common law grew with society, not ahead of it. As society became more complex, and new demands were made upon the law by reason of new circumstances, the courts, originally in England, out of the storehouse of reason and good sense, declared the 'common law.' But since courts have had an existence in America, they have never hesitated to take upon themselves the responsibility of saying what is the common law." [8]

That,

"The flexibility of the common law consists not in the change of great and essential principles, but in the application of old principles to new cases, and in the modification of the rules flowing from them, to such cases as may arise; so as to preserve the reason of the rule and the spirit of the law." [9]

That,

"The inexhaustible and everchanging complications of human affairs are constantly presenting new questions and new conditions which the law must provide for as they arise; and the law has expansive and adaptive force enough to respond to the demands thus made

[7] Laws of Kansas Territory, 1859.
[8] Lane *v.* Spokane, etc., Railway Co., 21 Wash. 119.
[9] Rensselaer Glass Factory *v.* Reid, 5 Cow. (N. Y.) 587.

of it, not by subverting but by forming new combinations and making new applications out of its already established principles." [10]

In the "everchanging complications of human affairs" "new questions" and "new conditions" had arisen prior to January 5, 1920. The legislature of the state of Kansas, in view of these changes, attempted to extend the application of the ancient principles of the common law in order that the public peace, the public health, and the general welfare might be better protected.

THE APPLICATION OF ANCIENT PRINCIPLES TO MODERN CONDITIONS

Again it is urged that the reader make a careful study of the cases heretofore cited and referred to, and it is suggested that the public, under modern conditions, is tremendously interested in the manufacture of food and clothing and the production of fuel. These are the three prime necessities of every civilized people. They are more important than transportation, street car service, telephone service, fire insurance, or the storage of grain. They are more important to the general public than the workmen's compensation, minimum wages for women and children, or safety appliances. Under present industrial and marketing conditions, the great packing industries of the country not only have a practical monopoly in the business of producing, preparing and furnishing meat products for public consumption, but the packing plant and the stockyards adjacent thereto also afford the only mar-

[10] Woodman *v.* Pitman, 79 Me. 456.

ket for the farmers' livestock. The producer of livestock is compelled to accept in payment for his "raw" product whatever the owners of that market offer him. As a public market, therefore, if for no other reason, the packing plant is impressed with a public interest. Public stockyards have been so impressed for many years on the market theory.[11] The packing plant is the more important part of the combination. Now, the same may be said with equal force concerning the production of flour. The mill and the elevator by which the mill carries on its business afford the market for the wheat produced by the farmer. The business of milling has become concentrated and highly specialized. and notwithstanding the fact that the price of wheat is fixed largely by world conditions, yet the milling industry in the United States of America influences that price. It also influences, or perhaps controls, the quantity, the quality and the price of that food product which, when properly prepared by the housewife or the baker, has been called the "Staff of life." The same may be said as to the manufacture of clothing in these later days. The clothing for the entire household, which in the days of our fathers was manufactured within the family, is now all produced by the cotton or the woolen mill or the clothing factory.

Of what avail is it then that the farmers produce livestock if the packing plants be closed and thus the means of converting live animals into food for human beings be suspended or destroyed? Of what avail is it that the grain be harvested, if the mill and the elevator refuse to function and thus afford a market for that

[11] Ratcliff v. Stock Yards Co., 74 Kan. 1.

grain and produce food for the public? When it comes to the production of fuel, every home in this land is directly interested. Not only is fuel necessary to the preparation of the food for the family, but in this climate a very large portion of the year it is a part of the home and shelter. The support of the homes of hundreds of thousands of working people engaged in all manner of industries is dependent upon the supply of fuel, for upon that depends the continuation of the industry in which the bread-winner is engaged and from which he draws his wages. The mining and production of fuel has been called the "Key" industry.

The internal commerce of the country, affecting as it does the very life of the nation itself, depends for its existence upon the efficiency with which the industry of mining and producing fuel is carried on. Transportation without fuel is impossible. Again, of what avail is it that the channels of commerce be kept open if there be no coal produced to be transported? If the government have the power and authority to prescribe rates and other regulations for fire insurance, for the storage of grain, for the carriage of passengers, of the rates to be charged for the transportation of commodities, of the quality and continuity of service in public utilities and common carriers, and the multitude of regulations which have been thrown around the various businesses which affect the public convenience, can it be said that the government must stand by powerless and see the people reduced to poverty and want because the great business interests owning the coal deposits of the country choose to close down the mines, or because the great packing interests conclude to take a vacation,

or because the flour millers are dissatisfied with market conditions and conclude to force the people to meet their requirements by limiting the supply?

Here we are met by the determined objection of some corporations and other employers of labor who brand the law as a "long step toward state socialism." They say that packing houses, flouring mills, sugar mills, cotton and woolen mills, clothing factories, coal mines and oil fields are private industries. They learnedly talk of the ancient Sumptuary Laws of England by which it was attempted to fix the price of almost every commodity in general use and the wages of labor in almost every avocation. These laws failed and the opponents of the Kansas law urge that for the same reasons the Kansas Industrial Law will fail.[12] The same dismal prediction of failure has been made against every law which has been proposed to supervise, regulate, or control common carriers, public utilities, banks and insurance companies. The same prophecy was confidently published by the same class of thinkers in regard to the Bank Guaranty Act, the Blue Sky Law, the Welfare Commission, and the Workmen's Compensation Act in Kansas. It is not necessary to add to what has already been said as to the nature of the businesses enumerated in Section 3a. They are, in fact and in law, impressed with a public interest, and therefore they are, as stated in the law,

> "subject to supervision by the state as herein provided for the purpose of preventing industrial strife, disorder and waste, and securing the regular and orderly con-

[12] See dissenting opinion of Justice Field, Munn *v.* Illinois, *supra.*

duct of the businesses directly affecting the living conditions of the people of this state, and in the promotion of the general welfare." [13]

LIMITATIONS ON STATE REGULATION

Not only is it urged that some of these businesses are purely private and therefore not subject to any regulation by the state, but it is also claimed that the Kansas law attempts to bring these private industries under the *general* regulatory powers of the state, and thus to treat them as though they were public utilities. Under the Kansas Industrial Law, we have not subjected the industries named to the *general* regulatory powers of the state. We have provided for regulation in case of *emergency* only. The law provides that in case a controversy, or other circumstance, arises which may endanger the continuity or efficiency of service, or affect the production or transportation of the necessaries of life, and thereby endanger the public peace or threaten the public health, power and authority is vested in the Court of Industrial Relations.[14] Even the limited supervision which the Court is given over contracts of employment can be exercised only "in any action or proceeding properly before it (the Industrial Court) under the provisions of this Act." [15] Reading this provision in connection with Section 7 of the Act, it will be noted that no proceeding can be properly before the Court of Industrial Relations except

[13] Since these lines were written, the Supreme Court of Kansas has definitely decided the question in favor of this law in State, ex rel., *v.* Howat, et al., June 11, 1921.

[14] See Section 7, Kansas Industrial Law.

[15] See Section 9, Ibid.

in case of a public interest arising by reason of some of the circumstances stated in Section 7. Thus it will be seen that the jurisdiction of the Court of Industrial Relations does not attach except in case of an emergency which threatens the public peace or the public health. The law provides further that the order made by the Court shall be temporary in its nature. It is provided that:

> "Said order shall continue for such reasonable time as may be fixed by said Court or until changed by the agreement of the parties with the approval of the court." [16]

It is therefore plain that even in case of an emergency threatening the public peace or the public health, any order made by the Court is for the temporary purpose only of preventing injury to the public and that when the emergency is passed, the business goes back to its normal condition, the state steps out, and there is no further regulation of the business.

NECESSITY OF CONTINUITY OF OPERATION

In Section 6, however, it is declared that:

> "It is necessary for the public peace, the public health and the general welfare that such businesses shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security and be supplied with the necessaries of life."

To that end it is provided that no person, firm or cor-

[16] See Section 8, Kansas Industrial Law.

poration or association of persons, shall in any manner or to any extent hinder, delay, limit or suspend such continuous and efficient operation with the intent to evade the purpose and provisions of the law.

Many years ago it was discovered that powerful business interests were able by combination and collusion to "juggle" the market and thereby to prey upon the public. The Sherman Anti-trust law was enacted for the purpose of preventing such unlawful "combinations in restraint of trade." There is a suspicion among well-informed people that strikes in certain industries have been called by collusion of unscrupulous leaders of labor and equally unscrupulous heads of big businesses for the purpose of curtailing the production and the supply of some necessary of life, thereby enabling the producers to advance the price. It was publicly charged only recently that certain big business interests were purposely oppressing labor with the intent to cause a general nation-wide strike in the industry and thus to reduce the price of the raw product to the industry and the price of the finished product to the public. This would enable the industry affected to make a big profit from each end of the transaction.

It has always been a difficult thing to prove a conspiracy in restraint of trade and the Kansas legislature did not rest the public interest solely upon the ability to prove such conspiracy. The declaration in Section 6 and other provisions of the law are intended to enable the Court of Industrial Relations to act without the necessity of proving even a criminal intent and without the necessity of proving a combination or collusion. If the continuity or efficiency of operation is

such as to injure the public by a curtailment of the supply, then the court may act in the premises. In this particular respect the industries affected by the Industrial Act are placed upon the same basis as a public utility. The public utility of whatever kind or nature must furnish continuous and efficient service. It is not permitted, under the laws of the land, to cease operations unless it receives authority to do so from the government. This is a very important matter. The effect of such regulation may be very far-reaching and should be very beneficial to the public.

It is further provided, in fairness to the industry, that in case any person, firm, or corporation engaged in any of such businesses may desire to suspend, limit, or cease operations, application may be made to the Industrial Court, and said Court shall hear such application promptly and if it shall be found that the same is made in good faith and is meritorious, authority to limit or cease production shall be granted by order of the court. There is another provision relating to businesses especially affected by seasons and market conditions, which provides that rules may be made permitting the cessation or limitation of such businesses when necessity may require it.[17]

THE POLICE POWER

The law is intended to protect the public. That intent is so apparent that it cannot be misunderstood. It is the police power of the state which is invoked. It is claimed that every provision of the Kansas Industrial Act is within the police power of the state in the nar-

[17] See opinion of Industrial Court, Docket No. 3803, Millers Case, Appendix, p. 177.

rower sense of that term, but taking the more comprehensive definition of the term "police power," it seems that there can be no question in the matter.[18]

IN CASE OF EMERGENCY

No power is granted to the Court of Industrial Relations to interfere except in case of such an emergency as makes it necessary that the state step in to protect the public. In case of a great public emergency the law grants power to the state to take over the business. It is provided that:

> "In case of the suspension, limitation, or cessation of the operation of any such industry, if it shall appear to the Court of Industrial Relations that such suspension, limitation, or cessation will *seriously affect the public welfare* by endangering the public peace or threatening the public health, then the Court is authorized and directed to take over, control, direct, and operate said industry *during such* emergency."

This part of Section 20 of the Industrial Act should be interesting when considered in connection with the experience of the state of Kansas in operating the coal mines during the strike of 1919. At that time the attorney general applied to the supreme court of the state for a receivership, under the Anti-trust Laws, alleging a conspiracy or combination to cease production. It is very doubtful whether any such combination or conspiracy existed. The strike was a reality,

[18] See Bacon *v.* Walker, 204 U. S. 311, 31 Law Ed. 409; Muller *v.* Oregon, 208 U. S. 412, 52 Law Ed. 551; Central Lumber Co. *v.* S. Dak., 226 U. S. 157, 57 Law Ed. 164; Holden *v.* Hardy, 169 U. S. 366, 43 Law Ed. ——; Dakota Central Tel. Co. *v.* S. Dak., ex rel Payne, 250 U. S. 281, 63 Law Ed. 910.

the conspiracy or combination was a surmise. Some slight evidence perhaps could have been produced to prove that allegation but it was never necessary. The operators did not answer in the case and receivers were appointed on the prima facie showing made by the state in default of any defense by the operators. The unionized miners absolutely refused to work under state receivership and volunteers were called for. These volunteers were wholly inexperienced in the mining of coal but were the flower of the state's young manhood, many being ex-service men. Under the state law and under the laws of humanity, untrained miners could not be sent into the deep mines. Only the surface or strip mines could be operated. The presence of the state militia and a contingent of troops from the regular army preserved the peace and prevented physical violence being used against the volunteer miners. But the problem of the production of coal in the Kansas field under strike conditions was not solved. The strike was called off because of orders made by the U. S. Court at Indianapolis. The regular miners returned to work and the state stepped out. But the problem, the real problem, was never met. If the strike had continued through the long, hard winter, with no coal being produced except from the surface mines by untrained volunteer workers, the story might have been different. The coal which it was possible to produce under such circumstances would have been but a very meager part of that which would have been absolutely necessary to prevent great suffering in the state during the balance of the winter. It might have been necessary for the state to import non-union miners. It might

have been very hard to get non-union miners. The state might have stayed there in the mines with the militia to preserve the peace for an indefinite period. Section 20 of the Industrial Act is meant to meet that situation. If such a crisis should occur again, under the provisions of Section 20, without the necessity of proving any conspiracy or combination, or any violation of the anti-trust laws, but merely by reason of a public emergency, the state may take over the mines, and have complete control of the situation until such time as the emergency shall pass. It is to be most sincerely hoped that there will be no such occasion. If the emergency should arise, it might be necessary to have an emergency police force with which to patrol the mining district, preserve the peace, protect the men who desire to work, and prevent industrial disturbance.

There is a provision further, however, that a fair return and compensation shall be paid to the owners of such industry, and a fair wage to the workers engaged therein during such state operation. During the emergency of the World War, the Government of the United States, by act of Congress, did precisely what is provided may be done by Section 20 of the Kansas Industrial Law in case of an emergency. The government took over the railroads, operated them, paid the expenses out of the Federal Treasury, collected the revenues, guaranteed a fair return to the owners, paid that out of the public funds, and when the emergency had passed handed the roads back to the owners. Was that "state socialism?"

LABOR ALSO IMPRESSED WITH PUBLIC INTEREST

Still further applying old legal principles to new circumstances and conditions, the Kansas legislature, under Section 3b, declares that:

> "Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utilities or common carriers within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act."

This declaration seeks not only to impress capital invested in these essential industries with a public interest, but it also declares that labor engaged therein is impressed with a public interest and that it owes a public duty. The law-making body, under Section 3b, recognized the fact that the public interest is affected by the limitation or suspension of such essential industries in the same degree when that limitation or suspension is affected by labor and when it is affected by capital. Of what avail is it that a corporation owning and operating a railroad be regulated by law and required to furnish service of a proper quality and continuity, if, in the exercise of the alleged and pretended inalienable right of the laborer to strike and by conspiracy, by duress, or by intimidation to prevent others from working, the entire service may be suspended and the public left to suffer the inconvenience and hardship resulting from such suspension? Why regulate one-half and leave the other unregulated? What right has labor engaged in these essential industries to freeze or starve the public by the strike which

capital might not claim by the lockout or by suspension of the business. When citizens of a central Kansas town find their public utilities forced to shut down and their homes left cold by reason of a shortage of fuel, what is the difference whether that shortage of fuel is caused by the refusal of the owners of the mine to produce coal or by the refusal of the miners to work or to permit others to work? If government have the right under the police power to protect the health and general welfare of the public, does not that power extend to labor as well as to capital?

THE EVEN BALANCE OF THE SCALES OF JUSTICE

Under the provisions of the Kansas Industrial Law men who invest their capital in the essential industries and men who engage themselves as workers therein are placed upon an absolute equality. The law does not undertake to compel any man to invest his money in any of the essential industries. He is perfectly free to choose his own investment. The law does not attempt to compel any man to engage as a worker in any of the essential industries. He is absolutely free to choose his own employment. The law does say to the investor, "If you invest your money in any of these essential industries, you must submit to such regulation as is necessary in the protection of the public." The law does say to the laborer, "If you engage yourself as a worker in any of these essential industries, you must submit to such regulation as is necessary in the protection of the public." The law does say to the investor in the essential industries, "If you are not satisfied with the regulation which the state exercises over the

industry, you may change your investment. All you need to do is to find a purchaser for your stock or your interest therein." The law does say to the laborer engaged in the essential industries, "If you are not satisfied with the regulation which the state exercises over the industry, you may change your occupation at any time. All you need to do is to find another job." The state by the Industrial Law says to the investor and to the laborer alike, "The public has an interest in the business in which you are engaged because you are producing or transporting the necessaries of life. Therefore you shall not engage in a private quarrel which will either temporarily or permanently destroy the business in which the public is so vitally interested. The state will provide you with a means and with instrumentalities by which you may adjudicate your controversies, but in no event shall you invade the public's right to food, to clothing, to fuel, and to public service."

IS THE INDUSTRIAL CONTROVERSY JUSTICIABLE

This brings us to the question whether the industrial controversy is, or is not, subject to adjudication. The Kansas Industrial Law provides for the adjudication of industrial disputes in very much the same way that other classes of controversies have been adjudicated in all the Anglo-Saxon countries of the world for hundreds of years. We accept without question the authority and jurisdiction of our courts to adjudicate matters affecting the life, the liberty and the property of the citizen. A man commits a capital crime. He is found guilty by a jury of his peers. He is hanged be-

cause of the judgment and sentence of a court. The liberty of the individual is subject to adjudication and there is a great variety of crimes for the commission of any one of which he may be placed in jail or in the penitentiary. Every dollar's worth of property which he possesses may be taken away from him by the adjudication of a court. His domestic relations are subject to adjudication. Even his children may be taken away from him under the juvenile laws of the land.

If a man's right to live be justiciable, if his liberty may be taken away from him by the judgment of a court, if all his property may be subjected to the claims of his creditors by a civil judgment, if his domestic relations be subject to adjudication, surely then such prosaic matters as hours of labor, working conditions, and wages are also matters which may be adjudicated. But the Kansas law does not make the industrial controversy subject to adjudication except in case of the public interest. It is only when by reason of circumstances arising out of the controversy, the party of the third part,—the general public,—acquires an interest, that the state steps in. In the public interest and in the public interest only may the courts adjudicate and settle the industrial controversy.

THE ADJUDICATION EXEMPLIFIED

A Kansas farmer employed a man to dig and complete for him a well to furnish water for domestic use. The man employed to do the work had had great experience in well digging and was equipped for the business. He stated to the farmer that it would be impossible in advance to tell how much the cost would

be or to predict the result. The farmhouse was on high land. It was impossible to foretell how deep into the earth the well would have to be extended, how many feet of limestone would have to be penetrated, how much gravel, how much clay, etc. About the best contract that could be made was that the well digger and his two grown sons should install their well digging machinery and proceed to sink the well to such depth as water could be found, then they should wall it up and complete it and the farmer should pay what the work was reasonably worth. It was done. When the bill was presented the farmer refused to pay it, claiming it was too much.

A suit was brought in the district court of the county in which the transaction took place. The action was of the kind lawyers call a suit in "quantum meruit," or roughly and liberally interpreted—a suit for what it was worth. The district judge presided and a jury of twelve good and lawful men were impaneled and sworn to try the cause. The plaintiff introduced his evidence. He showed first the contract by which the farmer agreed to pay what the services were reasonably and fairly worth; second, that he performed the services; third, the nature of the work—the depth to which the well was dug, the character of the various strata penetrated in the digging process, the number of feet of limestone, of soapstone, of clay, and of gravel; the walling up and the completion of the well; the result as to the production of water in sufficient quantities; the expenditure for explosives in getting through the limestone; the hazards of the work, the skill required, the number of days employed, and

finally the usual and ordinary wage paid for such services in that community. Then the defendant introduced such evidence as he had in his defense. The court instructed the jury as to the law, which briefly and roughly stated is that the well diggers should recover what their services were reasonably and fairly worth in consideration of all the circumstances shown by the evidence. The jury retired to the jury room and later in the same day returned into court a verdict by which they found for the plaintiff in practically the sum claimed by him. Judgment was rendered by the court upon the verdict and the judgment and cost were later paid by the farmer.

No one disputed that this was an adjudication in a matter of wages. The tribunal before which it was tried, beginning at the time of the trial, reached back over a period of, we will say, sixty days and adjudicated and determined the controversy according to established rules and the law of the land. It was an ordinary lawsuit in a court of general jurisdiction.

Take now a case tried before the Court of Industrial Relations. Complaint is filed by a body of workmen engaged in a meat packing plant. They are about to strike and engage in industrial warfare which would temporarily close the plant, cause breaches of the peace and economic waste; perhaps spread to other plants of the same kind, limit the supply of food, materially injure and perhaps temporarily destroy the market for livestock and generally disturb economic conditions in the community, perhaps in the entire state. The Industrial Law gives the Industrial Court jurisdiction of such cases, in the event of a failure of the

parties to agree. The case is called for trial in the Industrial Court, both sides appearing. Complainants introduce their evidence. The character of the work can be determined beforehand because the work in which each man is engaged is the same every day in the year. Each man works at his usual place, he does the same thing under the same conditions, with the same implements or machinery, in the same way, day after day, from year's end to year's end. There is nothing unknown about the occupation. The physical strength required, the skill needed, the hazards of the employment, the sanitary conditions—all are known beforehand. In this respect this suit differs from the one first mentioned. The evidence as to the nature of the work and working conditions is all introduced and there is also evidence as to the usual and customary wage in similar occupations in the community. There is also evidence as to living costs as bearing upon the question of a fair wage. The company which owns and operates the packing plant introduces its evidence in its defense. The Industrial Court upon the evidence, taking into consideration the industrial law which provides that workers in the essential industries shall have a fair wage and moral and healthful surroundings, appraising also the condition of the business and the right of capital invested in the essential industries to a fair return, and considering all these matters, makes its findings of fact, enters its conclusions of law and makes its order. Its order extends sixty days into the future—not sixty days into the past. The Industrial Court, therefore, technically speaking, is providing for the future and its duties are therefore legislative.

Only when the supreme court finally passes upon the matter in case of a review, does adjudication in the technical sense take place. But all the processes in the two cases are identical with that one technical exception. One applies to the past, the other to the future. The same qualities of mind, the same knowledge of law, the same judicial attributes, the same reasoning, the same sense of justice are required in the trial of both cases.

SOME OF THE PENALTIES PRESCRIBED

The Kansas legislature, in its effort to protect the public against the evils of industrial warfare, in Section 3b of the Industrial Law, declares that employees as well as employers, workers as well as investors, in the essential industries shall be subject to the provisions of the Industrial Act. In Section 6 of the Act the legislature declares that it is necessary for the public peace, health and general welfare that these industries shall be operated with reasonable continuity and efficiency, and that, therefore, no person, firm, corporation, or association of persons shall in any manner willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the provisions of the Act. In Section 17, the legislature declares it to be unlawful for any person, firm or corporation, or for any association of persons to hinder, delay, limit, or suspend such continuous and efficient operations. Section 17 also provides that there shall be no restriction upon the right of any individual to quit his employment at any time, but specifically prohibits any person from conspiring with, or inducing,

others to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operations of any such industries; and it further specifically prohibits picketing, or intimidation by threats or abuse, with the intent to induce others to quit their employment or to keep them from accepting employment or from remaining in the employ of any of the industries named.

INDUSTRIAL WRONGS AND THEIR REMEDIES

These restrictions upon labor have been denounced in unmeasured terms by a number of the governing officials of labor organizations. The condemnation of the Kansas Industrial Law by these representatives of labor might be fully justified if the law had stopped after making these restrictions and had given in compensation therefor no remedial rights. Alongside of these restrictive measures should be noted the fact that there has been created an impartial tribunal into which labor may go at any time without cost and may have its grievances and controversies with employers investigated and adjudicated. The Kansas law substitutes for the strike, the boycott, duress, intimidation and violence in industrial disputes, the orderly processes of a civil tribunal. The Court of Industrial Relations has the power and jurisdiction to summon all necessary parties before it, to take the testimony of witnesses, to investigate all conditions affecting the industry, and when necessary in the protection of the public interest to order such changes as may be necessary in the matter of working and living conditions, hours of labor.

rules and practices, and a reasonable minimum wage or standard of wages.[19]

At this point we meet violent opposition from both organizations,—the organized employers and the organized workers,—who in unison declare that no human tribunal can fix a wage at which labor must work or which the employer must pay, and labor adds that no human tribunal can prohibit workers from striking in order to procure justice from their employers. Yet that, in substance and within certain limitations, is what we are undertaking to do in Kansas. We are not without judicial authority although it must be admitted that we have little enough precedent to guide us. In Re Debs, 158 U. S. 564, 39 Law Ed. 1092, Justice Brewer delivered the opinion and with his usual clarity of thought and felicity of expression stated the principles of law which very largely influenced and guided in the framing of the Kansas Industrial Act. The power of Congress to regulate interstate and foreign commerce and commerce with the Indian tribes is a part of the police power which formerly belonged to the states but which, upon the adoption of the Federal Constitution, was surrendered to the National government. Therefore, there seems to be a close analogy between the Debs case and cases which might arise under the Kansas Industrial Act. Justice Brewer in the opinion makes the following statement:

> "The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong

[19] Sections 7 and 8, Kansas Industrial Law.

arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws."

The learned justice in the Debs case was considering the question of a great strike among the employees of the railroads entering Chicago. In another place in the opinion he uses this expression:

"The forcible interference with that commerce; *the attempted exercise by individuals of powers belonging only to government*, and the threatened continuance of such invasions of public right, presented a condition of affairs which called for the fullest exercise of all the powers of the courts." (The italics are ours.)

In another part of the opinion Justice Brewer says:

"Doubtless, it is within the competency of Congress to prescribe by legislation that any interferences with these matters shall be *offenses against the United States, and prosecuted and punished by indictment in the proper courts.*" [20] (The italics are ours.)

Again, in the case of Wilson *vs.* New (243 U. S. 331, 61 Law Ed. 755) the question of the rights of the public, the authority of the government, and the rights and duties of employers and employees were considered. In Wilson *vs.* New the court considered the constitutionality of the Adamson Law, so-called. This case was also

[20] See also Duplex Printing Co. *v.* Deering, 254 U. S. 443, 65 Law Ed. 176.

carefully studied in the framing of the Kansas Industrial Act. It is claimed that in everything, except possibly its penal sections, the Kansas Industrial Act is strictly within the principles of law laid down by Chief Justice White in the prevailing opinion in Wilson *vs.* New. In that case the power of Congress to enact such legislation was challenged. But the prevailing opinion unmistakably upholds such power when the country may be confronted with an emergency which threatens the public. In the prevailing opinion it is stated:

"Further yet, what benefits would flow to society by recognizing the right because of the public interest to regulate the relation of employer and employee and of the employees among themselves, and to give to the latter peculiar and special rights, safeguarding their persons, protecting them in case of accident, and giving efficient remedies for that purpose, if there were no power to remedy a situation created by a dispute between employers and employees as to the rate of wages, which, if not remedied, *would leave the public helpless, the whole people ruined and all the homes of the land submitted to a danger of the most serious character?* . . . We are of opinion that the reasons stated conclusively establish that, from the point of view of inherent power, the Act which is before us (the Adamson Law) was clearly within the legislative power of Congress to adopt, and that, in substance and effect, it amounted to an exertion of its authority under the circumstances disclosed to compulsorily arbitrate a dispute between the parties by establishing as to the subject matter of *that dispute* a legislative standard of wages operative and binding as a matter of law upon the parties,—a power none the less efficaciously exerted because exercised by direct legislative act instead of by the enactment of *other and appropriate means provid-*

ing for the bringing about of such results." (The italics are ours.)

It is suggested that a study of those portions of the brief of Solicitor General Davis and others in Wilson *vs.* New, set out in U. S. Supreme Court Rep. 61 Law Ed. beginning on page 756 will greatly assist persons who desire to make a thorough and technical study of the questions discussed in the opinion. There seems to be significance in the language used by the Chief Justice above quoted: "Other and appropriate means providing for the bringing about of such results." Read in connection with the context, these words seem to point to the establishment by legislative act of some tribunal clothed with authority to adjust and regulate such conditions as they might occur from time to time. The present Federal railroad labor board is at least somewhat in line with the suggestion of the Chief Justice.

SOME OBSERVATIONS UPON "DUE PROCESS OF LAW"

A strong protest is made by some labor leaders against the provisions of Section 17 of the Act, which prohibits conspiracy, picketing or threats to prevent others from entering the employment of the essential industries or from remaining in that employment. The old argument in favor of the "peaceful picket" and the right to persuade others to cease work is used. The Kansas Act does not prohibit picketing except in the essential industries named in the law. The picketing of a mercantile establishment would not be a violation of the Act. Is the picketing of any kind of a

business permissible under the general laws of the land? There is a division among the courts upon this proposition, but the tendency of the times seems to be toward the outlawing of the picket. It is undoubtedly a disturbance of the peace of the party picketed. If persisted in it becomes a nuisance not only to the party directly affected but to the public. Assume that the displeasure of organized labor should fall upon the owner of a jewelry store. He may be a good citizen. He pays his taxes. He obeys the laws of the land. He has never been arrested. He may be a man who began life as a worker at the bench in the repair department of the very business of which he is now the owner. He may have acquired the ownership by long years of painstaking industry, frugality and honest dealing. But in some way he has failed to meet the demands made upon him by the "organization." He is not given his day in court. He is not taken before the officers of the law and allowed to explain his side of the controversy. He is not permitted to produce witnesses nor to have counsel. His civil rights are denied. He is condemned by a private tribunal not recognized by our constitution or our laws. His place of business is picketed by persons who proclaim, either by printed signs or by vocal sounds, the anathema of labor against him. They seek to intimidate his customers, or at least to influence them against his business. The "good-will" of his business, recognized by the courts as a valuable property in itself, may be destroyed and his financial loss may be as great as would have resulted from the burning of his building by an incendiary. When directed against any of the industries

named in the Kansas act, the picket becomes a public menace if it threatens to limit or suspend the production or transportation of the necessaries of life. Where is "due process of law" which organized labor so loudly demands in injunction cases in courts?

The mere statement of this case is its own argument. The owner of that business has rights which have arbitrarily been taken away from him, not by government but by an organization which claims the right to exercise a power which belongs "only to government." The people have tolerated the picket and other arbitrary means resorted to by labor, no doubt partly because of inertia, but also because of a feeling that labor has not been given a square deal. There is an element of justice in the latter proposition, for labor has not heretofore been given a legal remedy for the wrongs which it claims to have suffered. Under the Kansas Industrial Act that legal remedy is afforded.

THE PENAL SECTIONS OF THE LAW

The Court of Industrial Relations has no criminal jurisdiction. The Industrial Act, however, contains three sections providing penalties for willful interference with the court's jurisdiction or defiance of its authority. Section 15 forbids any employer to discharge or to in any way discriminate against any employee because of the fact that such employee may testify as a witness before the court of Industrial Relations in matters of controversy between employer and employees, or may initiate proceedings, or may be in any way instrumental in bringing such controversy to the

attention of the Court. Complaint is made that this section restricts the right of the employer to employ whom he pleases and to discharge when he pleases. It has been stated that the section is invalid under the principles laid down in the decision of the Supreme Court of the United States in the case of Coppage *vs.* Kansas.[21] It is the contention of the friends of the law that the principles stated in that case do not apply, that the restrictions placed upon the discharge of employees by Section 15 of the Industrial Act are no infringement upon the liberty of contract, but are purely for the purpose of protecting the jurisdiction and processes of the court. The importance of the section is apparent. If it be within the power of the employer to peremptorily discharge from his employment or to otherwise discriminate against an employee who may be instrumental in bringing proceedings before the Court of Industrial Relations, a sort of terrorism would prevail in industry and employees could not be found who would have the temerity to bring matters to the attention of the Industrial Court or even to testify freely and truthfully in matters brought upon the Court's initiative. Such a situation would practically defeat the law. Section 15 applies to proceedings in the Industrial Court in very much the same way as laws forbidding tampering with or intimidating witnesses or destroying or concealing evidence in matters before courts of general jurisdiction.

Section 18 of the law declares any person willfully violating the provisions of the Industrial Act or any valid order of the court of Industrial Relations guilty

[21] 236 U. S. 1, 59 Law Ed. 441.

of a misdemeanor. This applies to employees and others a rule not essentially different from the rule applying to the employers under Section 15 and the same reasons exist for the rule.

By Section 19, it is declared that any officer of any corporation engaged in the essential industries or any officer of any labor union or association of persons engaged as workers therein, or any employer of labor coming within the provisions of the act "who shall willfully use the power or authority or influence incident to his official position, or to his position as an employer of others and by such means shall intentionally influence, impel, or compel any other persons to violate any of the provisions of this Act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony . . ." This section has been violently attacked by certain classes of labor officials. Under Section 3448, General Statutes of Kansas, 1915, it is provided that "every person who in the night-time shall steal, take, or carry away any domestic fowls, etc., shall be deemed guilty of grand larceny." If the ordinary chicken thief can be punished for grand larceny, what should be done with a labor official or an officer of a corporation who will use his power and authority, through the lockout or the strike, to paralyze business, throw thousands out of employment, and penalize the general public by limiting or suspending the production of life's necessities? If the purloiner of a hen worth fifty cents may be sent to the penitentiary, what ought to be done with a labor union official who by his autocratic power refuses men the right to mine enough coal to warm the sick in a hospital? It is not

a debatable question. The penal features of the industrial law are moderate in their spirit and intent and are necessary in the protection of the public and in the promotion of the general welfare.

THE NATURE OF THE TRIBUNAL

The Kansas Industrial Act creates "a tribunal to be known as the Court of Industrial Relations." Exceptions have been taken to the use of the word "court" by some lawyers and it has been frequently pointed out that the tribunal is not a court but a commission or board created by the legislature for the purpose of administering the industrial law. As a technical proposition the critics are, no doubt, correct, but the legislature was duly informed on that point at the time of the passage of the act. In the public forum and discussion, the opponents of the bill called attention to this point in very much the same way that critics of the law have since done. One of the advocates of the measure who addressed the legislature in favor of the bill discussed the same question in his address and stated very plainly the true nature of the tribunal. It was agreed that the proposed tribunal would not be and could not be a court in the technical sense, but all admitted that it should not be called a board or commission.

Among the numerous definitions of the word "court" given in Webster's International Dictionary are the following:

> "All persons duly assembled under authority of law for the administration of justice whether specifically appointed to exercise only judicial powers, as most

modern courts, or combined with legislative powers as often formerly and still in some cases as that of the British Parliament, the legislature of Massachusetts, etc.; an official assembly legally met together for the transaction of judicial business; a judge or judges sitting for the hearing or trial of causes; a tribunal established for the administration of justice."

The tribunal established by the Kansas Industrial Act is a "tribunal established for the administration of justice," but it has no power to punish for contempt, no power to issue an execution, no power to enforce its own judgments. If a witness ignores a subpœna issued by the Court of Industrial Relations, that court is authorized by statute to "take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna.[22] In case of the failure or refusal of either party to obey and be governed by an order of the Court of Industrial Relations, proceedings are to be brought in the Supreme Court of the state of Kansas to compel obedience thereto.

It is this lack of judicial power which has caused some technically minded lawyers to object to the use of the word "court" in this connection. Under the present constitution of the state of Kansas, the powers which were absolutely necessary to the administration of the Industrial Act could not be combined with the judicial powers above stated. Under the Kansas constitution the three departments of government are distinctly separated,—executive, legislative, and judicial. More than twenty years ago an effort was made by the governor and legislature to create a body known as the

[22] Section 11, Kansas Industrial Act.

"court of visitation," which under the statute was authorized to exercise judicial powers and functions, and also to act in a legislative and executive capacity. The Supreme Court declared the law unconstitutional. In the framing of the Kansas Industrial Act care was exercised to avoid that mistake. In the fixing of a scale of wages, and establishing rules concerning working hours and working conditions, the Court of Industrial Relations is providing for the future and is really exercising legislative rather than judicial functions. Experience may prove it necessary to adopt an amendment to the Kansas constitution permitting the Court of Industrial Relations to exercise both judicial and legislative functions.

The Court of Industrial Relations, however, in the performance of its duties must at all times be invested with judicial attributes of a very high order. It has state-wide jurisdiction. The subject matter of the jurisdiction affects every part of the state and every citizen within the state. It has to do with public peace, the public health, and the general welfare. It affects the production and distribution of the prime necessities of life. It affects the health and happiness of hundreds of thousands of citizens engaged as workers in the various industries named in the Act. It affects vast investments of capital. Its activities may powerfully influence the industrial development of the state. It has jurisdiction of personal and property rights as important as, if not more important than, homestead and exemption rights. Such matters in courts of general jurisdiction would be assigned to the equity side. The members of this tribunal must at all times preserve a

judicial attitude of mind and approach every question in a spirit of justice. The Court of Industrial Relations in the trial of cases is required by statute to observe "the rules of evidence as recognized by the Supreme Court of the state of Kansas in original proceedings therein." The court is constantly called upon to rule as to the admissibility of evidence and to pass upon the objections of counsel, to overrule or sustain motions, and to otherwise conduct the proceedings of the trial. After the testimony is taken, the statute requires that it be transcribed in duplicate, one copy to be retained among the permanent records of the Court of Industrial Relations and the other to be used in the Supreme Court of the state in case either party desires a review by that court. It will be seen, therefore, that the proceedings in the Court of Industrial Relations are practically identical with the proceedings in the trial courts of general jurisdiction. After the trial of the case, the Court of Industrial Relations makes its findings of fact, under Section 7 of the Act. If under the facts an order is deemed proper, the court then enters its conclusions of law and makes its order in the case, as provided by Section 8 of the Act. Up to this point, the work of the Court of Industrial Relations has been very similar to the proceedings in a chancery court or in a federal court on the equity side. In the court of chancery and in the equity court, the presiding judge often appoints a master in chancery or a commissioner to take the testimony. In such a case the master or the commissioner would perform the same duties that the Court of Industrial Relations does in the trial of every case. The Industrial Act provides

that either party dissatisfied with the order made by the Court of Industrial Relations may bring proceedings in the Supreme Court in the nature of mandamus where a review of the order and the proceedings in the Industrial Court may be had. In such a case as that, the Industrial Court's entire record has practically the same value in the Supreme Court as would the report of a commissioner or master in chancery. If neither party desires a review by the Supreme Court, the order made by the Court of Industrial Relations stands and is enforcible. If either party refuses to obey the order of the Industrial Court, the court itself may apply to the Supreme Court for a writ of mandamus to compel obedience to the order.

In the performance of its duties, the Court of Industrial Relations is constantly called upon to decide important questions of law, some of which are novel. It is a pioneer proposition. The legislature of the state of Kansas in the Industrial Act gave the Court an outline, but the Industrial Law in its completeness must be written by the court in its opinions and orders in accordance with that outline, in harmony with the constitution of the United States and the constitution of the state of Kansas, in consonance with established principles of law and in the light of the experience of mankind in the centuries past. Only the shallow minded will consider such duties easy of performance. The tribunal created by the Kansas Industrial Act is not a court of general jurisdiction. It is not a court in the sense that the word "court" might be used by pedants. It is a new type of court,—an industrial court having jurisdiction of problems which are most vital to civili-

zation today and upon the proper solution of which depends not only the prosperity and happiness of the people but also the very existence of government itself.

There has been some criticism of the law because it places such tremendous power in the hands of a body composed of only three men but this criticism is unwarranted because, as a matter of fact, every order of the Court of Industrial Relations is subject to review by the Supreme Court of the state. That court is the final authority upon all questions in litigation from all the inferior courts of the state. It will be seen, therefore, that the Court of Industrial Relations is not an ordinary board or commission, but is invested with such judicial attributes as give it an importance far greater than that of a board or commission.

The name, however, is of little consequence but the character of the tribunal is of tremendous importance. The work of the Court of Industrial Relations is such that it must be entirely free from political influence. It should be kept upon a plane of honor, dignity and ability second only to the Supreme Court of the state. Membership in this tribunal should not be conferred upon men as a reward for political service or as inducement for political services anticipated. The seeker after notoriety, the political manager, the chairman of the state central committee, the man who has rendered political service, or who may be expected to render such services to the appointing officiary should not be appointed, and public sentiment should make such men ineligible to appointment. The tribunal should not be expected to consider the political services or the political fortunes of any individual. No action of the court

should be influenced by the probable effect it will have upon "the party." *If the Court of Industrial Relations cannot be kept free from the influence of politics and of politicians, if it cannot be placed and kept upon the high plane of a judicial tribunal, it will fail and the law should be repealed before failure becomes disgrace.*

There is one peculiarity about this tribunal,—it deals with litigants as classes. In every other court the litigants are individuals. Labor, capital, and the general public,—these are the three and only litigants that ever appear in the Court of Industrial Relations. Now, it is evident that it will never be proper to elect the members of this tribunal by popular vote because to do so would inject into every election campaign a class issue. Organized labor would probably sacrifice every other place on the ticket in order to elect its choice upon the Industrial Court. Organized capital would bring every possible influence to bear to elect the opposite kind of a man, and the general public, unorganized and unable to protect itself, would suffer in the results. The method of selection must be by appointment and must be free from political influence.

INVOLUNTARY SERVITUDE

A most grotesque argument is made against the Kansas Industrial Act,—that it imposes involuntary servitude upon workers. The analysis of the law hereinbefore given shows the fallacy of that statement. It might be added, however, that there is no provision in the Act to compel men to work. The policy of the law is to create economic conditions which will impel men

to labor in the essential industries for the same reason that capital might seek investment therein. Capital seeks investment where the security is good and the return assured. This is an economic law as immutable as the law of gravitation. Labor will seek employment where the wage is fair and the working conditions favorable. The Kansas Industrial Act seeks to give to labor a fair wage and favorable working conditions and thus to call to its aid the economic law which will assure the essential industries at all times labor of the highest skill and fidelity.

INVOLUNTARY IDLENESS

> "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction." (Thirteenth Amendment to the Constitution of the United States.)

It may not be necessary to adopt another amendment to the Constitution, but the fact remains that involuntary idleness is an evil almost, if not quite, as vicious as involuntary servitude. A fair administration of industrial justice would minimize, perhaps wholly remove, this evil. While radical leaders of labor are denouncing the Industrial Law on the ground that it provides for involuntary servitude, it might be well to devote some attention to the involuntary idleness imposed upon thousands of working people by the strike and the picket, aided by the boycott. To the laboring man who has a family to support the terror of the strike, the picket, the boycott and other industrial disturbances which take away from him his means of

livelihood, is a consideration more vital than the imaginary problem of involuntary servitude, so persistently and falsely asserted by the radical labor leadership. Involuntary idleness should also be prohibited by the law of the land. A man who is willing to work is as deserving of the protection of the law as the man who may have forced upon him a service not of his own choice.

JUDICIAL SUPPORT—FUNDAMENTALS OF INDUSTRIAL ACT

Ample support for the fundamental principles of the Kansas Industrial Act are: (1) Sir Matthew Hale's statement of the public's interest, made two hundred and sixty years ago; (2) the application of that ancient principle to more modern conditions, by Chief Justice Waite in 1877 in Munn *vs.* People of Illinois; (3) Justice Brewer's clear statement, in 1895, of the law with regard to the power of courts and legislatures to protect the public and to penalize "the attempted exercise by individuals of powers belonging only to government," in re Debs; and (4) Chief Justice White's strong statement in 1916, upholding the right of Congress by legislation, in case of a great public emergency, to fix a permanent standard working day and establish temporary wage regulations for employees engaged in operating railway trains in interstate commerce.

By the Industrial Act we are attempting such regulation of all businesses which are affected with a public interest as is necessary to protect the public, as suggested by Sir Matthew Hale and Chief Justice Waite.

In so doing we are forbidding "the exercise by individuals of powers belonging only to government." We are making interference with *such businesses offenses against the state to be prosecuted and punished in the criminal courts,* as suggested by Justice Brewer in re Debs; and we have by this enactment provided "other and appropriate means providing for the bringing about of such results," as suggested by Chief Justice White in Wilson *vs.* New.

PART THREE
A FEW INTERESTING INCIDENTS

"HIS MAJESTY, THE KING," MEETS THE LAW

On the fifth of April, 1920, a trifle more than two months after its organization, the Court of Industrial Relations undertook an investigation of the coal mining industry in southeastern Kansas. The investigation was immediately occasioned by complaints made by coal miners, but was in line with the general policy of the Court to investigate conditions which were declared to have occasioned the strike of the December and January previous.

There were some very interesting developments during this investigation. The Industrial Court issued a subpœna for Alexander Howat, president of the United Mine Workers of America District No. 14, and for several of his subordinates, members of the district board. It was the intention of the Court to question these men as to conditions which caused unrest among the miners. Mr. Howat, the same individual who denied coal for the general public and refused to permit a small quantity to be mined for the benefit of a local hospital three months earlier, with his usual hostility to law refused to obey the subpœna. The Industrial Court applied to the district court of Crawford

County for an order compelling him to attend and testify. This order was granted and Mr. Howat and his subordinates refused to obey the order of the district court. They were cited for contempt of the order and were tried before District Judge Andrew J. Curran upon that charge.

All the miners in the district took a vacation and the city of Pittsburg was full of men who had come to town to see how the new instrumentality of the law would work. There is no denying the fact that a large majority of the miners themselves were very loyal to Mr. Howat. The evidence shows that of the 10,000 or 12,000 miners in that district fewer than 500 can claim English as their mother tongue. The others are men brought from southern Europe by the coal operators fifteen or twenty years ago. They are principally Italians, Sicilians, Sardinians, Poles, and Slavs. At Girard, Crawford County, Kansas, for many years was published a weekly paper styled *The Appeal to Reason,* a socialist organ. The paper was afterward suppressed by the United States Government. Its editor was imprisoned and its owner committed suicide. When these foreigners were first brought to this district, socialism was rampant and they fell under its influence. Mr. Howat's style of oratory and method of procedure seem to appeal to them. For many years this section of Kansas has been under the more or less dominating influence of this man who has been called "The Miners' King." At one time the court house of Crawford County was filled with county officers of the socialist faith. It was under such conditions that Andrew J. Curran, a young lawyer, born and bred in

that locality, was nominated by the democrats for district judge. The socialists had a candidate for the same position who had been engaged in business as keeper of a livery stable for many years. The republicans supported Andrew J. Curran for that position. It was a notable campaign. Among other peculiar situations developed was the fact that the leading Catholic priest of the district and the pastor of the First Methodist Episcopal Church of Pittsburg campaigned the county together, urging the election of Andrew J. Curran for district judge. He was elected.

It was before Judge Curran that Alexander Howat was called to have his first experience with the Kansas Industrial Law. It was a most dramatic scene in the court room when the court proceeded to pass sentence. The room was literally packed. It was an interesting sight. The faces in the audience were nearly all foreign faces. Sicilians and Italians seemed to predominate. There was a look of intense interest upon each face. It was a cloudy look. It was the look of men who believed they had tremendous interests involved in the proceedings and were doubtful as to the result. There was a brief silence in the crowded court room. The coolest man in the room and the most unconcerned was the district judge. He looked over the top of the desk before him toward Howat who was seated beside the undersheriff. Speaking deliberately in a clear well modulated voice, he said, "Alexander Howat, stand up." Howat stood up. A look of mild surprise swept over the faces in the court room. The judge continued, "Alexander Howat, it is the judgment and sentence of the Court that you be confined in the county jail of

Crawford County until such time as you consent to be sworn and to testify in the Court of Industrial Relations. Sit down." A look of amazement swept over the faces back of the railing as Howat sat down. A look of relief came over the face of the undersheriff and others inside the railing. The judge's face was immobile and he proceeded in the same fashion to sentence each of the others. The court room still remained packed with standing men when the undersheriff, a young, live, clean-shaven chap had the "prisoners" stand up and commanded the crowd, "Make way down the center aisle there." The men began silently and sullenly to move out. Judge Curran announced a recess of the court until two P. M., picked up his papers and walked down through the crowd to his chambers without the least sign that he regarded the occasion as anything out of the ordinary. There were several of the judge's friends present who were very fearful that violence might be attempted in case the "miners' king" should be sentenced to jail. With Andrew J. Curran it was a mere part of the day's work. Of all men connected from first to last with the enactment of the Kansas Industrial Law or with its administration since its enactment, first honor should be given to Andrew J. Curran, who has lived his life among these people, who must continue to live among them, who was unmoved by personal fear or political policy. He did his duty simply under his oath of office without reference to any other consideration. If there had been sitting upon that district bench in Crawford County, Kansas, on that day, a petty politician, a weak man, a man of any other type, the first year of the administration of

the Kansas Industrial Law might have been a very different story.

THE OCCASION OF THE FIRST UNLAWFUL STRIKE

February 16, 1921, the District Board of District No. 14 United Mine Workers of America called a strike in two little mines. Two hundred miners quit work. The pretended cause of the strike was the failure of a mining company to pay a sum of about two hundred dollars claimed as back pay by a young miner. The claim was founded upon a provision of the contract which required the mining company to advance the pay of young miners on their arrival at the age of nineteen years. A young man named Mishmash claimed to be entitled to the advance as of the date August 31, 1917. The superintendent had some doubt about the matter and went to the young man's mother to inquire. The mother showed the superintendent an entry in a Bible giving the date of birth as August 31, 1899. At the superintendent's request she also signed a written statement to the same effect. Later, the miners' officials took the matter up and it was discovered that there were two entries in that Bible,—one showed the date to be August 31, 1898 and the other August 31, 1899. The school records were hopelessly confused, the mother made a statement each way and the matter was apparently dropped by both sides. The only question in the case was the date of the boy's birth. The boy's mother was a widow and had moved out of the district with her family. On February 16, 1921, the miners' district board suddenly determined to "get justice for the poor widow" by calling a strike.

One of the members of the District Board refused to vote for the strike, but the two hundred men quit work at a cost to them of more than $12,000 in wages and the miners' officials for calling the unlawful strike were sentenced to serve one year in the county jail, by the District Court.

After the contempt proceedings were concluded, the Industrial Court proceeded to investigate the *cause* of the strike. The family, or the family records were unavailable. An inspector for the Court searched the neighborhood and found a neighbor woman who was present at the time of the boy's birth but testified she did not know the date. The old Austrian who acted as godfather at the christening did not remember the date, but he did recall that the Austrians present were somewhat excited over the news that "Franz-Joseph's woman had been murdered the day before and wished it had been the old man." Upon the completion of the aged Austrian's testimony, court recessed to allow the clerk to repair to the city library and ascertain, if possible, the date of the assassination of the Empress of Austria. The clerk soon returned with a volume of the Encyclopedia Britannica from which it was shown that the Empress was assassinated in Geneva, September 10, 1898.

This evidence settled the issue. The date of the birth was August 31, 1898. The mining company owed the money. The Industrial Court directed the mining company to deposit the amount with the clerk of the District Court to be paid to the boy as soon as he could be located. The strike was ended and the men returned to work.

The "backpay" was the pretended cause of that strike. But why did not the District Board procure the conclusive evidence which was so easy of access? The miners with their intimate knowledge of the people and the circumstances could surely have found this evidence. It required one-half day for the agent of the Industrial Court to do the work. Some light may be thrown upon this situation by a few answers to questions propounded to Mr. Howat on the trial of the contempt charges:

"*Q.* Well, don't you know that if this boy had a claim for wages under a contract that you could recover it in court. *A.* No; I didn't know it. We never have settled any cases that way.

"*Q.* You think the boy couldn't collect the money in the courts? *A.* I couldn't say whether he could or not. I never tried it, and, anyway, we have a contract which provides for it and we wasn't obliged to go to court.

"*Q.* You don't go into court? *A.* No, sir; neither here nor in the other districts.

"*Q.* You didn't read the injunction? *A.* No; never did.

"*Q.* You don't recognize courts in the matter of settlement for wages? *A.* No, sir; we have a contract that covers that.

"*Q.* You don't recognize that contracts are made to be enforced in courts, then? *A.* No, sir."

THE SACRED RIGHT TO WORK

Ernest H. Guffey is a native of the state of Iowa and was at the time of the great coal strike a citizen

of the state of Kansas. For about five years prior to the strike he had lived in Crawford County, Kansas, and had been engaged as watchman at one of the surface or strip mines. Among other duties he was required to attend to the engine during the night, keep up the fires, keep the pipes from freezing, and "steam up" ready for the day's work in the morning. He was a member of local union No. 164 District No. 14 of the United Mine Workers of America. He claims he had authority from a member of the district board to continue his duties during the strike while the strip mine was being worked by college students and he remained at his duties until the strike was over. Considerable coal was produced at this mine by volunteer miners during that bitter December to help relieve public suffering.

Within a few days after the strike ended, the local union suspended Guffey for ninety-nine years and his fellow union men branded him as a "scab." The only charge against him was that he had scabbed during the strike by working for the state. His employers regarded him so highly that they refused to discharge him and all the miners working at that mine quit. The district is one-hundred per cent unionized so the mine closed down for want of workers. Three months afterwards, before the Court of Industrial Relations, Guffey and his employers told their story under oath. The employers testified as to his skill and fidelity at his work and of their desire not to do him an injustice by discharging him; but stated that it was impossible to operate the mine while he remained; that it would not be practical to bring in men from elsewhere to work

the mine. In answer to the question, "What would happen if that should be done," the superintendent answered, "Well, the mine workers would resent it and oppose it to the extent that I feel that they would be successful in seeing that nobody worked at that mine."

Various petty persecutions were indulged in against Guffey. He was ostracised socially. His former friends passed him by with a scowl or a sneer. The grocers refused to sell him provisions. At the time of the investigation he was getting his food products by parcel post. The House of Representatives in the Special Session passed a glowing resolution commending him for his loyalty to the state and condemning the local union for its action in suspending him. Stamped with the great seal of the state, bedecked, beribboned and engrossed on parchment, this resolution was presented to Guffey with much gusto.

The time came when the owners of the little mine could no longer stand the financial loss and Guffey was relieved of his position and left the neighborhood. Efforts to locate him have been vain. It is to be hoped that he took with him wherever he went the ornate resolution of the House of Representatives. The state of Kansas gave him no protection in a substantial way. His right to pursue the avocation of his choice and to live in the domicile of his selection was denied him by an organization of individuals exercising powers which "belong only to government."

At the 1921 session of the legislature, efforts were made by persons who resent that kind of tyranny to procure the passage of a bill providing for a state emergency police force which might be used to protect in-

dustrious, law-abiding men who desire to work under such circumstances; but strong political influences were marshaled which prevented any action, and the bill was killed in committee. The radical element in organized labor in Kansas, as elsewhere, seems to be strongly opposed to any instrumentalities of government which might aid in the enforcement of laws to protect working men under such circumstances, and the petty politician must not overlook the importance of the radical labor vote. Sometime, perhaps, another great emergency may arise and we may find legislators and other public men willing in the face of such an emergency to pass a simple measure providing for the protection of such men as Guffey.

RÉSUMÉ OF THE FIRST EIGHTEEN MONTHS' ADMINISTRATION OF THE INDUSTRIAL ACT

The Kansas Industrial Relations Act became operative January 24, 1920. On February 2, following, the Court of Industrial Relations established by the Act was organized and began to function. For the first year of the Court's existence it acted in a dual capacity of a Court of Industrial Relations and a Public Utilities Commission. The 1921 Legislature reëstablished the public utilities commission and relieved the Industrial Court of the burdens of utility regulation. From February 2, 1920, to August 1, 1921, thirty-nine formal industrial cases have been filed. Thirty-four of these have been decided and orders have been issued. Among the formal cases, there have been three original investigations instituted by the Court. The Court has also considered many informal matters

relating to industrial conditions and contracts of employment.

THE LAW AND LABOR

Of the thirty-nine formal industrial controversies instituted in the Court, thirty-seven have been brought by labor, or because of complaints made by labor,—twenty-seven by organized labor and ten by unorganized groups of laborers. Two have been brought by employers. The Amalgamated Association of Street and Electric Railway Employees of America, the International Brotherhood of Electrical Workers, the International Brotherhood of Stationary Firemen and Oilers, the Amalgamated Meat Cutters' and Butchers' Workmen of North America, and the Brotherhood of Railway Carmen of America,—all labor organizations affiliated with the American Federation of Labor, have filed cases for local unions in Kansas. In many of these cases the national or international representatives have appeared in court and testified or assisted in the presentation of the evidence. One case was brought by a group of members of various local unions of the United Mine Workers of America engaged in what is called "shot firing." The United Mine Workers of America, under the dominance of Alexander Howat, is violently opposed to the Industrial Law, but a number of the individual members of the local unions are in sympathy with the law and with the Court. In one case filed by organized labor, the "open shop" had been maintained and the complaint was treated by the Court as a complaint on behalf of all employees, both organized and unorganized. Of the thirty-seven suits

brought by labor, twenty-nine involved wages, eight involved working conditions only. Some of the twenty-nine cases involving wages also asked for relief in working conditions. Of the wage disputes decided, the Court refused increases in but three. In the others some increase was granted. In some of these wage cases, however, the total wage budget was not increased but a readjustment of the scale was made which seemed to be more fair to the workers than the scale formerly in effect.

Labor on the whole has appeared to be fairly well satisfied with its treatment in the Court of Industrial Relations. Only low paid labor, however, has appealed to the Court. The workers receiving the highest scale of wages have not found it necessary to come to the Court of Industrial Relations and, furthermore, seem to be hostile rather than friendly toward the law. All of the orders and judgments of the Court so far have been accepted by employers and employees alike with the exception of the last one,—the Wolff Packing Company case. In that case the employer, the Wolff Packing Company of Topeka, Kansas, has availed itself of the provisions of Section 12 of the law and has taken the matter for a review to the Supreme Court of the state. Laborers have in every case accepted the judgment of the Industrial Court although they might have demanded a review by the Supreme Court without any expense to themselves.

THE MINIMUM WAGE

The Industrial Law permits the establishment of a minimum wage only. The minimum wage, under the

law, must be a "fair wage." It is an interesting fact that in some instances the employers have voluntarily increased the wage of some of their employees above that fixed by the Court. This, as a rule, has been done only in the case of skilled or semi-skilled laborers, who under economic conditions, seem to be entitled to more than a minimum wage.

ORIGINAL INVESTIGATIONS

The original investigation of the coal mining industry in southeastern Kansas was probably the most important matter the Court has had before it since its organization. It involved working conditions for eight or ten thousand miners, the cost of mining and transporting coal and other matters of general interest to the public. During the progress of this investigation, the Court made informal bench orders giving relief to the miners from some onerous conditions which had existed. One of these referred to what is known as the "check off" system, which was modified and the operators were not permitted to "check off" from the miner's pay unjust fines assessed against him by his local union. Another order had reference to the discount charged miners for money advanced between pay days. The third informal order made at this investigation had to do with the price paid by the miners for explosives and other pit materials which they are required to purchase from the operators. As a result of this investigation, also, the Court published in pamphlet form its analysis of the cost of producing coal and of transporting it to various typical towns in

the state. This work was done under the supervision of the Court's chief accountant and gives valuable information to the public in regard to the purchase of coal.

INTANGIBLE VALUES

Many of the less important controversies which arise in industries have been settled and adjusted by examiners sent out by the Court for that purpose. The value of the Kansas Industrial Act as a repressive measure cannot be accurately estimated but there is no doubt that strikes and other industrial disputes have been averted because of the penal features of the Act. In one instance, the chairman of a strike committee, after reading Section 19 of the Act is said to have declined to serve on the committee and said to the other members, "You boys can run your heads into that noose if you want to, but I will not do it." The strike was not called and the controversy was settled within the industry.

REDUCING STRIKES TO THE VANISHING POINT

There were some sporadic cessations of work in the mining district in Kansas in August, 1920, resulting from controversies between the workers and the employers over the interpretation of trivial provisions of the contract of employment. These sporadic cessations of work have been widely advertised as strikes in violation of the Kansas law. They were nothing of the kind. The Industrial Court made an investigation of these alleged strikes and found that the produc-

tion of coal in the district was greater than the ability of the railroads to transport the coal out of the district. The production of coal and the supplying of coal to the state was in no way interfered with and there was no public interest involved and the Court refused to take action because it had no jurisdiction. The matter was settled by Mr. Lewis, president of the United Mine Workers of America, who overruled Alexander Howat, president of the local district, and ordered the men back to work under the terms of their contract. As a matter of fact, the production of coal in the district was approximately twenty per cent greater in 1920 than in 1919, and there was a corresponding increase in the earnings of the workers.

There have been but four strikes called in violation of the law. One was a strike involving two hundred miners in one of the small mines, called by Alexander Howat and a majority of the local board. This strike was called ostensibly because of a failure of a mining company to pay something like two hundred dollars to a member of the union, which was claimed to be due him because of a failure to advance his wages at the time they should have been advanced. The men remained on strike for twelve days and lost more than $12,000 in wages.

One other strike was also a miners' strike called by Alexander Howat and his associates, and involved only one hundred and fifty men. Neither of these strikes affected the public because of the small number of men involved. The Court of Industrial Relations has no criminal jurisdiction and no general jurisdiction. If it had not been for the penal features of the law, it is

likely that no action would have been taken in either of these matters. But as the calling of a strike by labor leaders is, under the terms of the Kansas Industrial Act, unlawful, action was taken against Mr. Howat and his associates. The calling of these strikes was in violation of an injunction issued out of the district court of Crawford County, in which the mines are located. President Howat and his associates were prosecuted for violation of this injunction and, in the first case, were each sentenced to one year in jail. From that sentence they appealed to the Supreme Court of the state and that Court has affirmed the judgment and sentence. This case involved a real test of the law. The Supreme Court sustained the constitutionality of the Act on all points raised in the case.[23] In the second case, they were also prosecuted for contempt of the injunction and were fined and required to give a bond conditioned that they should not call another strike. They have appealed this case also to the Supreme Court.

For the calling of the first strike, Alexander Howat, president, and August Dorchy, vice-president, were prosecuted criminally in the District Court of Cherokee County (in which county the mine is located). The trial was attended with some remarkable incidents. The president of the State Federation of Labor called a "holiday" and advised all union men to quit work and proceed to Columbus, Kansas, to make a demonstration in favor of Howat. There was no general response to this proclamation but the miners, following their long-established custom, all quit work during the

[23] State ex rel. *v.* Alex. Howat, et al., 109 Kansas Reports 376.

trial. Perhaps as many as two thousand miners proceeded from various parts of the mining district to Columbus, the county-seat of Cherokee County, but the sheriff took care of the crowds by a small force of deputies and kept the court-house square and the streets free. The trial proceeded and a jury of twelve men was impaneled from the body of Cherokee County. After a trial lasting several days without any especially exciting features, the jury returned a verdict of guilty. The defendants, Howat and Dorchy, were sentenced to six months in the county jail, to pay a fine of two hundred dollars each, and to give bond in the sum of two thousand dollars each, conditioned that they would hereafter obey the law. The giving of the two thousand dollar peace bond was made prerequisite to the right of appeal. Both men refused to give a bond which would be forfeited by the calling of another strike. On the thirtieth of September, 1921, they began serving their sentences.

This was the occasion of a general cessation of work by the miners in accordance with their former custom. This is what has been called the "Coal Strike." So far as state officials know, the miners were not called out by the order of Mr. Howat, Mr. Dorchy, or the District Board. Soon after October 1st, the international officers of the United Mine Workers of America deposed Mr. Howat and his District Board, suspended the district, and ordered the miners back to work. This precipitated a fight within the organization. It has been charged that the Industrial Law failed in this regard, that it did not immediately restore production of coal. This charge is wholly unfounded. The In-

dustrial Court took no action in the matter. The prevailing opinion in the Court was that, as there was an abundance of coal and there was no danger of public suffering, the controversy between the two factions of the union should be allowed to take its course, unless in the meantime the public peace might be threatened or a shortage of fuel should become imminent. The result has been that the International Union has won its fight and has, no doubt, permanently deposed the radical leaders and excluded from the Union the lawless element. At one time there was rioting on the part of women in the mining villages. There was no loss of life and no serious damage done, but the disturbance was such that the governor called out the National Guard to preserve order. After a short time all the Guard was sent home except one hundred selected men who were detailed to act as a special police until such time as their services would be no further needed. The following editorial appeared in the *Topeka State Journal* on January 13, 1922, and is a fair statement of the culmination of the coal strike:

> "Under a constitutional government, nobody can persistently defy the law and get away with it. This truth again has been demonstrated by the action of Alexander Howat in calling off the strike of miners in the Pittsburg district. The whole is greater than any of its parts. No amount of bluff and bluster on the part of Howat can alter the facts. He has been beaten. So long as the strikers were maintained in idleness by their fellow workers in other parts of the country a show of resistance could be kept up, even tho Howat remained in jail. When working miners began to withdraw their support and in consequence thereof Howat's

followers began to return to work, there was nothing left for him but to surrender or lose whatever semblance of power is left to him. The victory won by the Kansas court of industrial relations promises to be of far-reaching consequences in the future relations of both employees and employers to the public."

PROGRAM FOR RESUMING COAL PRODUCTION IN KANSAS

On the 5th of October, 1921, five days after the incarceration of Mr. Howat and Mr. Dorchy, the Industrial Court held a conference to determine its course of action in the matter. At that time the presiding judge submitted what he called a "Program for Resuming Coal Production in Kansas." The program was not adopted by the Court because the majority believed that there was no immediate occasion for intervention on the part of the state. The proposed program is given here merely as showing the possibilities of the Kansas Industrial Law in case of a serious strike in the coal fields of this state:

I

"The Industrial Court should at once ask the governor, under the provisions of Sec. 6209, Gen. Stat. 1915, to organize, through the Adjutant General, a military police force of sufficient strength and of selected men from the various National Guard units (by voluntary enlistment if possible). Said military police force should be used if needed in the mining district to protect miners who are willing to work, so long as such protection may be needed.

II

"If operation is not resumed, or practically assured, on or before October 12, 1921, the Court should at once ascertain the cause of the cessation of production. If

it is caused by defiance of the Industrial Act as reported, then the Court should ascertain whether, with police protection, the operators will be able to resume operations with the miners now in the district. If not, and the operators are willing to resume, the Court should aid in getting labor from elsewhere to operate the mines.

III

"There is abundant evidence now before the Court which would warrant abolishing the 'check off' system, and this should be done.

IV

"If the operators are unable or unwilling to proceed immediately in the production of coal, then the Court should proceed under Section 20 of the Industrial Act to take over and operate the mines.

V

"If it becomes necessary for the Court to take over the mines, the program should be substantially as above indicated. Protection, ample and permanent, should be provided by the state and a repetition of the persecution and practical exiling of Mr. Guffey, the one unionized miner who was loyal during the last strike, should be rendered impossible.

VI

"In all matters relating to the policing of the district, the state should coöperate with the sheriff of Crawford County and the sheriff of Cherokee County. These men are both men of nerve, are faithful to their trust, and I have no doubt can be relied upon implicitly to do their duty.

VII

"Immediately after coal production is resumed, the attorney for this tribunal and the attorney general should be requested to institute an investigation to ascertain whether there have been any violations of the injunction order issued by Judge Curran of the District Court of Crawford County; and if so, proper proceedings should be instituted against the guilty parties.

VIII

"Immediately after coal production is resumed, the attorney for this tribunal, the attorney general and the county attorney of Crawford County should also be requested to ascertain whether there have been any violations of Sections 18 and 19 of the Industrial Act; and, if so, proper proceedings should be instituted against the guilty parties."

The only other strike of any importance was the recent nation-wide "Packers' Strike." The international officers of the Amalgamated Meat Cutters and Butchers Workmen of North America ordered the strike. At Kansas City, Kansas, and at Wichita, Kansas, some of the members of that organization undertook to obey the order of the international officers. The Court of Industrial Relations held sessions in Kansas City, Kansas, to ascertain the facts with regard to the controversy. The employers in that instance claimed that there was no controversy between them and their employees, that new wage schedules and working conditions had been entered into through shop committees which were satisfactory to the majority of the employees. After having been served with summons in the case, the local union officials defaulted by

failing to file any answer or make any appearance. Under the circumstances the leaders of the union being in the attitude of defying the law and the mass of the working people apparently satisfied and at work, no trial of the controversy seemed to be feasible at the time and nobody was demanding trial. The Industrial Court insisted upon the strict enforcement of the anti-picketing and anti-intimidation features of the law. The city government and the city police force very efficiently enforced the law. After the second day of the alleged strike, there was no disturbance of any moment, the stockyards at all times were open, the live-stock market was undisturbed and the packing plants operated with reasonable efficiency, and after a week or ten days, with normal efficiency. The "packers' strike" in Kansas amounted to practically nothing. The strike was called for December 5th, 1921, and on December 8th, 1921, the *Kansas City Journal* contained the following editorial which fairly stated the situation and it is believed fairly states the general opinion of the unbiased public:

THE LAW IS VINDICATED

"The virtual collapse of the packing house strike in this section is an effective vindication of the Kansas court of industrial relations law, which no amount of misrepresentation can distort into an instrument for the denial of any rights to 'labor' which are enjoyed by 'capital.'

"The opponents of the law base their opposition, though they do not admit it, upon the fact that it sets up legal machinery for the protection of all concerned, employee, employer and the public. That is, of course,

not what the radical element wants. The radicals keep out of employment thousands of persons, men who are loyal unionists but who are afraid to expose themselves to the vengeance of the radicals.

"Whatever may be said of the packing house strike in other sections, where such measures as the court of industrial relations law are not available, the Kansas field is the very last where a strike is justified. The vigorous enforcement of the law has deprived strikers of the weapon upon which they have relied in the past to win their victories—the opportunity to compel the workers to strike, to prevent by violence others from earning a living, to club the employers into submission and especially to deny to the public its fundamental rights in the premises.

"It is not to be wondered that other states have enacted similar laws and that the president of the United States has formally recommended to congress the enactment of a federal statute containing the essential provisions of the Kansas law, the pioneer in the great movement for the protection of the hitherto ignored and oppressed public."

THE TESTS OF THE LAW

Every test of the Industrial Act which has been determined has resulted favorably. The district court of Crawford County, Kansas, (the home of Alexander Howat and the biggest coal producing county in the state) sustained the law by committing the officials of the miners district union to jail for refusal to obey process issued by the Court of Industrial Relations. The same district court further upheld the Industrial Act by enjoining the calling of strikes and committing the leaders to jail for violation of that injunction. In the district court of Cherokee County, Kansas, (the

next biggest mining county in the state) a jury convicted the president and vice president of the miners' district union of a misdemeanor for violation of the Industrial Law in calling a strike, and the district judge of that county committed said officials to jail upon such conviction. In the Supreme Court of the state of Kansas all of the fundamental features of the law have been upheld as constitutional and valid by unanimous decisions, all seven justices sitting and concurring.[24]

AN ILL-FOUNDED OBJECTION

Recently from high sources an objection has been raised that the Kansas law will prove futile because the Industrial Court thereby created has no code of procedure and no body of principles to guide it. By one of its own provisions, the Industrial Law is declared to be cumulative of all other laws upon the statute books. The Industrial Court may therefore call to its aid any portion of the code of civil procedure which it may find necessary. The Industrial Act itself provides in a general way a code of procedure and lays down general principles which serve as a guide to the Industrial Court. The industrial controversy is not so different from other human controversies as it might seem. General principles, as found in the statute and common law of the land and in that great reservoir of law—the published decisions of courts of last resort—may be made to apply to very many problems that come

[24] State of Kansas *v.* Jerry Scott, 109 Kan. 166 (No. 1 adv. sheets); State of Kansas *v.* Alexander Howat, 109 Kan. 376 (No. 2 adv. sheets); State of Kansas *v.* Wolff Packing Co., 109 Kan. 629 (No. 4 adv. sheets).

before the industrial tribunal. We are not, therefore, wholly without precedent, principle and rule to guide us. It has been said by very eminent authority that:

> "The common law grew with society, not ahead of it. As society became more complex and new demands were made upon the law by reason of new circumstances, the courts . . . out of the storehouse of *reason and good sense* declared the common law."

In attempting to solve the new problems that come before it, already the Court of Industrial Relations has been compelled to resort to the "storehouse of reason and good sense." It has already stated certain principles by which it has been guided. Some of these are:

1. The basic eight-hour working day, contended for by labor, is not sacred. The length of the working day depends upon the nature of the work. In some occupations eight hours or less may be proper, in others where the work is lighter and the conditions better, nine or ten hours may be proper. The social rights of the worker should be preserved to him by limiting the working hours to such an extent as that he may have a reasonable time for recreation and for the family circle.

2. The "one-man-one-job" rule of the union, where it causes economic waste, is wrong and workmen should be allowed to work at two jobs if they can do so without physical injury to themselves. No arbitrary rule of the union which involves an economic waste will be approved.

3. A fair wage for skilled and faithful workers should be such as to enable them to procure for them-

selves and family all the necessaries and a reasonable share of the comforts of life, to properly support and educate their children and to provide decently for sickness and old age.

4. Collective bargaining is right and proper, and should be recognized and encouraged but a collective bargain must be fair to the public and free from duress and intimidation.

5. The unorganized worker must be protected in his right to work as well as the organized worker.

6. Workers on strike are not employees in the sense of the Kansas law and their jobs therefore are not entitled to the protection of the law.

7. The anti-picketing features of the law must be strictly enforced by the local authorities; otherwise the court will call upon the governor for military protection.

8. Capital invested in the essential industries must be protected in its right to a fair return; but in an extreme case, wages to labor must be regarded as of first importance.

It will be seen, therefore, that the process of establishing such rules, principles and precedents as may be necessary in the adjudication of industrial controversies is going forward. The objection above stated is not well founded.

A THOUGHTLESS CRITICISM

Reckless opponents of the Kansas industrial law have loudly insisted that the law will be futile and that it cannot be enforced for the reason that it is impos-

sible to imprison large bodies of striking workmen. Strange as it may seem, at least one of the prominent friends of the law has admitted this point as an objection. Evidently this admission was made thoughtlessly. Evidently this charge was made by the opponents of the law either without thought or with a deliberate intent to mislead.

No law was ever enacted by which large numbers of men could be imprisoned. If a mob breaks loose in a community and commits a crime, the public authorities will have done well if they arrest, prosecute and imprison five or six of the leaders. In case of insurrection the same result would follow. At the close of the Civil War, the gallant leader of a defeated army surrendered his sword to the opposing commander. It was returned to him and he was told to permit his troopers to retain their horses as they would need them in the spring plowing.

The Kansas Industrial Law does not contemplate the jailing of large bodies of men. It does provide for the prosecution of the leaders who call the strike and it does provide punishment for those who conspire or confederate together to cripple an industry or who willfully violate the provisions of the Act or any valid order of the Court of Industrial Relations. It does provide for the policing of a disturbed district and for the protection of men who desire to work. This is what was done in Kansas in the coal strike after some delay and it is what was done in the Kansas packing strike immediately. In each case police protection afforded those who desired to work was sufficient to keep the industry going and prevent public inconveni-

ence or suffering. It is unfortunate that the Kansas Industrial Law has been interpreted to the public almost wholly by men who are not lawyers and who are not competent to interpret the law in the spirit in which it was written and in the spirit in which it has been interpreted by the courts.

A man cannot be convicted of a crime unless criminal intent is proved beyond a reasonable doubt. Unionized workers who quit at the order of their leaders may have no such criminal intent. In view of the experiences of the past, a unionized worker who goes out on strike at the command of his superior officers might well say in his defense that he quit because he was afraid to continue at work, that he quit because he did not desire to be branded a "scab," to be socially ostracised, or to run the chances of the violence which so often occurs in such cases. The Kansas Industrial Law was not intended to imprison men merely because they quit work. This is a matter of their own choice. It is not hard and it is not expensive to police a disturbed district and protect the men who desire to work. Experience in Kansas has shown that such protection, when afforded, has been sufficient to solve the problem.

It is the duty of government to protect people from the evils of industrial warfare as well as from invasion by a foreign foe; to protect the babies of Chicago or New York from disease and death, occasioned by a strike of violence on the part of drivers of milk wagons, as well as to protect the bankers of Brownsville, Tex., from a raid of Mexican bandits across the border. It is the duty of government to "provide for the common defense, promote the general welfare, and secure

the blessings of liberty" for all the people. A government which does not perform that duty is unworthy of the loyalty of its citizens.

THE KANSAS EXPERIMENT

In the democratic countries of the world, the law springs from the needs of the people and keeps pace with the developments of civilization. Every permanent addition to the law of the land, takes root in public necessity and grows from such necessity as a tree grows from the soil. Legislatures as a rule do not enact laws until there is an impending necessity for them. The need for new legislation must be present or imminently prospective. Otherwise, the statute books would be filled with legislative enactments which might never be needed in the government of the country. In the framing of the Kansas Industrial Act the attempt was made to bring within the jurisdiction of the Court of Industrial Relations only those industries upon which the public must depend for the necessaries and comforts of life. Furthermore, within the terms of the Act were included only such industries and vocations as experience had shown were especially subject to such dangers of industrial warfare as would threaten the public peace, the public health, and the general welfare. The jurisdiction of the Court of Industrial Relations therefore is circumscribed. The building trades are not included. Housing is a necessity, but it was not thought that industrial warfare had so invaded that field as to make it necessary for the state to interfere. Agriculture, of course, was not included. There never

had been any occasion to regulate the farmer. At all times and under all circumstances, he had produced food for the public to the limit of his capacity. There never had been a strike among agriculturists. It may be that in future times conditions may change to such an extent that it will be necessary in the protection of the public peace, the public health, and the general welfare that other industries and vocations must be brought within the terms of the Industrial Law and the jurisdiction of the Court of Industrial Relations. That is a matter with which we need not concern ourselves at this time.

Sociologists, welfare workers, ministers of the gospel, and many other benevolently inclined persons have condemned the Kansas law upon the theory that a controversy with regard to wages, hours of labor, and working conditions ought to be settled within the industry by means of conciliation, arbitration, coöperation, etc. It is freely conceded that there are problems affecting employers and employees which cannot be properly settled except by sympathetic coöperation and a spirit of fair play, but this is not a legitimate argument against the Kansas Industrial Law. This Act in no way hampers or restricts the operation of all such altruistic methods of settlement of industrial controversies. It is only after all such methods have failed and when industrial warfare is imminent and the public interest becomes jeopardized that the Kansas Act becomes operative. Then and only then the Industrial Court has jurisdiction to restore and preserve industrial peace until such time as the parties may agree. Every order made by the Court is temporary in its nature and auto-

matically ceases to become operative when the parties have agreed, except in case the agreement may be unfair to the general public.

It is not contended that the present law is the "last word" in such legislation. All that is claimed for it is that it is one day's journey toward better industrial conditions and the realization of a fuller measure of industrial justice. It is hoped and believed that a proper administration of the law will prevent industrial warfare in all its forms; that it will relieve capital, labor and the general public from the tremendous economic waste which always follows in the wake of war; that to some extent it will protect the public against profiteering prices and from economic disturbances which are often caused by the strike, the lockout and the boycott; that it will steady the production and transportation of the necessaries of life, providing at all times an ample supply of such necessaries and thus stabilizing the price which the public must pay for the same. It is also hoped that the proper administration of the Industrial Law will, to a large extent at least, protect the worker in his right to a fair wage, to moral and healthful surroundings while engaged in his labor, and to a fair opportunity to earn a comfortable living. Enemies of our form of government take advantage of industrial and economic disturbances to decry democracy and to seek to build up in this country opposition to our form of government and disrespect for our laws. It is believed that the strict enforcement of the provisions of the Industrial Act, by creating better economic and industrial conditions, will rob the agitators of their chief argument and it is also hoped that the

penal features of the Industrial Law will have the effect of preventing much of the agitation which has been carried on in the past few years. If these results may be accomplished, the whole citizenship will profit by the greater respect and reverence for government which must result among all classes of our people.

PART FOUR
APPENDIX

INTRODUCTORY NOTE

In this appendix will be found the Industrial Law itself, and certain other matters which it is believed will be interesting to persons who are studying the law and the principles of industrial justice which it contains and which the Court of Industrial Relations has been trying to administer.

Included herein is an excerpt from a decision rendered by the Public Utilities Commission of Kansas some six months before the Industrial Act was introduced into the legislature. This matter is printed here for the reason that it contains a statement of the social rights of laboring people. This statement created great interest among welfare workers all over the United States. The Public Utilities Commission decision was written by the author of this book and because of the statement of the social rights of workers therein contained, the author was called upon to take part in a Rotary Club program on the subject of relations between employer and employee. The speech delivered before the Rotary Club is also printed herein. This speech came to the attention of the governor of Kansas and was the cause of the author of this book being called upon to write the bill which afterward became the Kansas Industrial Act. The principles of the Industrial Law are set out in detail in the Rotary speech and a comparison of the speech with the act itself will show that the law is an outgrowth of the speech.

Certain typical opinions of the Industrial Court are also included in this appendix in the belief that they at least indicate the manner in which the Court of Industrial Relations is seeking to administer industrial justice, and that they state some general principles which must be applied if industrial conditions in this country are to be improved.

SOCIAL RIGHTS OF WORKERS

In June, 1919, an action was tried before the Public Utilities Commission of the state of Kansas which involved the question of the closing hour for freight depots of the various railroads in Topeka. This was a matter which was properly before the Public Utilities Commission. The traffic association of Topeka was demanding a late closing hour in order to accommodate the shippers. The railroad companies were demanding an earlier closing hour because the late closing hour compelled the railroads to pay out wages for overtime work to employees under federal rules then existing.

At the trial of the case a man in overalls appeared who said he represented the freight house employees who were demanding the right to be heard in their own behalf. He said that the late closing hour was objectionable to the workers because it deprived them of reasonable recreation, social privileges and time for association with their families. The matter was continued for a few days in order that the working people might present their evidence. The case was decided in favor of the laboring people. The following paragraph taken from the decision in that case states the ground upon which it rests:

"Now, in regard to the claims of the freight handlers and other laboring people, who are directly or indirectly affected by the closing hour, the Commission feels that there is much merit in their contention, and this really is the matter of prime importance in this controversy. It is not a question of

the eight-hour day, although workers are desirous of observing the eight-hour program; it is not a question of the adequacy of the wage nor of the conditions surrounding the worker. It is largely a social question. The custom and practice of the American people has made the evening hour the hour for recreation, for self-improvement, and for the family circle. Lectures, concerts and religious meetings are held during the evening hours, and picture shows and other places of amusement and recreation are kept open and operated during the evening hours and not at other hours of the day. The public libraries and other means of self-improvement are available at the evening time. In the family the evening hour is the children's hour. The gathering darkness has driven them in from their play to the house and to the family circle. That is the hour in which the children are entitled to the society and companionship of both the parents. To deprive the children of this privilege, and to deprive the parents of this pleasure and of this opportunity of performing their parental duty, is a very serious matter and affects the very foundations of society. It is a matter in which the entire nation is interested."

It has been said by an eminent woman welfare worker that this paragraph is the first expression of any public official, committee, commission, court, or tribunal, having authority to speak upon the subject, which expressly recognizes the social rights of laboring people, as also legal rights.

IS THERE A LABOR PROBLEM?

Speech Before the Rotary Club at Topeka, Kan., October 30, 1919,

By W. L. HUGGINS

"If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;

* * * * * * * *

If you can talk with crowds and keep your virtue
Or walk with kings—nor lose the common touch;
If neither foes nor loving friends can hurt you;
If all men count with you, but none too much;
If you can fill each unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son!"

It would seem that Kipling's "If" was written for this especial time and occasion. From eminent authority we learn that, in the early stages of the Peace Conference, "Stones were clattering upon the roof and wild men were shrieking at the keyholes." That condition, so graphically described, seems to prevail at this time all over the United States of America. Never have so many tremendously important problems presented themselves for solution at the same moment, and never have so many designing demoniacs busied themselves with throwing stones nor so many wild men been shrieking through the keyholes. It is a time of conflict and confusion, worse confounded. It is a time when every man should keep his head, but, never-

theless, many individuals, high placed, are shrieking at the keyholes, predicting revolution, civil war and dire disaster, and shouting, "Hurry, hurry, hurry," at the few sane and sober men in places of governmental authority who realize that study, reflection, coöperation and calm judgment are vitally essential.

I am asked the question, "Is there a labor problem?" My time and yours forbids that I enter into any extended discussion of the subject. I can only make a few observations. In answer to the question, however, I will state that, in my opinion, the industrial crisis now upon us presents the most momentous problem which ever confronted the American people. If we fail to solve it by peaceful and lawful means, then, and in that event, democracy will have failed. However, I do not anticipate a revolution or civil war. The comforting thought comes to me that, in matters of government, at least, we are an Anglo-Saxon people and Anglo-Saxons do not *re*-volve; they *e*-volve.

The so-called American revolution was not, in fact, a revolution. It was merely the result of an evolution toward liberty and justice which had been progressing in the British Isles for several hundred years. A number of cultured and courtly gentlemen wearing knee breeches, powdered wigs and silver buckles, who signed the famous document declaring that all men were created free and equal, retained their human slaves without any seeming compunction of conscience. The American people, after this so-called revolution, proceeded under the same form of local government to develop a system of laws and customs founded upon the English common-law, which had been evolved out of the experience of the English-speaking peoples for centuries before that, and which is to this day the fundamental law in every state of the American Union with the single exception of Louisiana. During the time that this peaceful evolution was taking place among the

English-speaking peoples, only a few miles of water separated Britain from a liberty-loving people who were governed by one of the rottenest monarchies that ever existed on the European continent, and who in their revolutionary struggles passed from monarchy to republic and from republic back to monarchy so many times that the average man becomes confused in studying the history. The French people are now living under a republican form of government which is so new that it does not yet appear whether it shall be permanent or ephemeral.

We, the American people, must evolve a lawful solution of this constantly recurring industrial condition which so vitally affects the peace and prosperity of the entire country and of every class of our citizens. The task may be, and in fact we know will be, a difficult one, but it must be accomplished, and now is the time to begin.

When the responsible head of an almost all-powerful industrial trust peremptorily and contemptuously refuses to meet and confer with representatives of employees on matters relating to wages and working conditions or other matters of interest to such employees, when he refuses to arbitrate matters in dispute, when he denies the right of the workingman to bargain collectively, he commits acts of tyranny which should not be, cannot be, and will not be tolerated any longer by a free people.

What is a corporation? A corporation is a collection of individuals who combine their capital and their efforts for the purpose of carrying on some enterprise more advantageously than it could be done by individuals. A corporation does its business collectively through its officers. It bargains with its customers collectively in that way. What is a trust in the sense in which we generally use the term in this country? A trust is an illegal collection or combination of corporations engaged in the same line of business, who by such combination expect collec-

tively to carry on said business more efficiently and profitably; an institution which, through its responsible officers, bargains collectively for its component parts. Therefore, when the responsible head of a great industry denies his workmen the right of collective bargaining, he claims a privilege for his class which he arrogantly denies another and equally deserving class. The American colonies separated themselves from the British empire because of acts of oppression which were trivial compared with that.

On the other hand, when the duly elected representative of a great labor trust presents to employers demands, justifiable or unjustifiable, and couples these demands with a threat that if his requirements are not promptly complied with he will call out on strike a half million workingmen and thereby paralyze industry and cause incomparable nation-wide suffering among his fellow citizens, he also commits an act of tyranny which is without parallel in the history of free governments, and one which, in the new industrial code which we must have, should be denominated "treason" and penalized accordingly.

Do not misunderstand me, however. I claim that we cannot in justice take away the workingman's right to strike unless and until we give him a better means of defense. Under present conditions he has no other weapon with which to protect himself and family. The law of the land justifies even the taking of human life in defense of self or family; but while the law justifies homicide in self-defense, it also provides courts, peace officers and an elaborate code of criminal laws and procedure, all for the purpose of protecting the peace, the person and the property of the individual, and of providing a means by which violations of law may be penalized. Unfortunately, in matters of industrial disputes and disturbances, no such means of defense or redress have, as yet, been presented.

America has just finished fighting in a great war for the

purpose of making the world safe for democracy; and we, my fellow citizens, have not been altogether noted for our modesty when we talked upon the prowess of American armies in that conflict. Someone has said, however, that we are about to fight again to make democracy safe for the world. Just now we are in the midst of a brutal and destructive industrial war, which may yet prove, if prompt action be not taken, more destructive to American life and property and cause more suffering among the American people than was caused by the war from which we have just emerged.

I can speak only of general principles and not of specific causes. It is urged that the great steel strike was caused by Bolshevist agitators preying upon the credulity, cupidity and lawless disposition of alien workingmen. If those facts be established, then there should be more room provided in the penitentiary for the Bolshevist and more room in the steerage on eastbound ocean-going vessels for the aliens. But that does not dispose of the principle involved. Assuming the facts to be as indicated above, then if there never had been a Bolshevist, socialist or alien within 1,000 miles of the steel plant; if the workmen had all been 100 per cent American citizens as we find organized labor in Topeka, Kan.; and if through their proper representatives they had approached the heads of that industry with a proposition that working conditions, wages, hours of labor or any other matter of vital interest to the workmen should be discussed and considered, and if the same refusal had been made in the same way by the heads of that great industry, would the result have been different? Of course not. An intolerable condition would have been presented to the workers. Yet similar conditions and questions have existed for years. It is a chronic case, and constantly growing more serious. For many years some employers have claimed the right to discharge employees for the

single and simple fact of membership in labor organizations; and for many years union men, at least at times, and under certain conditions, have refused to allow the employment of nonunion men in plants in which union men were in the majority. The question of the open shop or the closed shop has caused in this land of ours riots, destruction of property, and even loss of human life. Notwithstanding all these facts, we have devised no means of controlling such situations. If two obscure citizens have a dispute over property or property rights of the value of a few dollars, either one of the disputants may compel his adversary to come into the courts of the land for a settlement of the dispute. When once in court, even though the cost to the state may be ten times the value of the property in dispute, the controversy must be heard and adjudicated.

More than 250 years ago Sir Matthew Hale, of England, later lord chief justice, wrote what has been called the most famous paragraph in the whole law relating to public service. It is as follows:

"Whenever the king or a subject have a public wharf to which all persons must come, who come to that port to unload their goods, in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, etc., but the duties must be reasonable and moderate, for now the wharf and crane and other conveniences are affected with a public interest and they cease to be *juris privati* only."

The principle stated by Sir Matthew is invoked every time a complaint is lodged with the Interstate Commerce Commission or any of the state public utilities commissions, in which citizens complain of excessive rates by railroads or other public-service concerns. We have extended that principle, however. We are not now content with fixing the rates, but we go farther and compel the service. We require all public utility concerns to serve all comers

alike and to continue the service. We do not permit, for instance, organized capital, owning and controlling a railroad system, to cease operation of its trains because further operation may be considered disadvantageous to the owners. Why, then, should we permit organized labor by striking, to cease the operation of trains? Should not capital and labor be treated equally? Each are equally essential to business.

I would like to answer my own question by saying that there is a reason, and only one, which might at this time, in case of intolerable conditions, justify organized labor in ceasing operation, by means of strikes, where capital is not allowed to do so. That reason is that a lawful tribunal has been provided before which capital may go with its grievances. If the rates are too low or the burden too onerous, if the practices required by the public are unreasonable, the courts, the Interstate Commerce Commission and the state commissions are open to organized capital. In the case of organized labor there is no such tribunal. Therefore, if I were permitted to vote to adopt or reject the anti-strike feature in the Cummings bill, I would, before voting to support it, have to be absolutely sure that an adequate remedy is provided whereby labor may have its rights and wrongs adjudicated and settled in an orderly and lawful way by an impartial tribunal.

Why should there be no lawful means for the adjudication of these constantly recurring industrial disputes, which are oftentimes of transcendant importance? It seems to me that it is time for the American people to act vigorously in this matter. We should no longer depend upon that type of politician who always keeps his ear to the grass roots. We should demand of our public men real leadership. We ought to stand aggressively for Anglo-Saxon liberty, which means liberty regu-

lated by law. We ought to demand for every citizen Anglo-Saxon justice, which means even-handed justice administered by lawfully constituted tribunals according to established rules. We have temporized and we have tried various half-considered and poorly devised plans of avoiding strikes, lockouts, black lists and the boycott. We have not succeeded. In my humble judgment we will never succeed until we strike out boldly and demand the enactment of a comprehensive industrial code of laws and the establishment of such tribunals as may be necessary to enforce such laws.

It may be that our present court system will answer. If not, then additional courts should be established. There should be courts, not commissions nor committees. These disputes should be adjudicated, not arbitrated. Arbitration has not been successful. The principle of arbitration is not right. In practice it usually results in the choice by each contestant of an arbitrator who is thoroughly committed to the view of the party which chooses him. After that it becomes a jockey between the two as who shall name the third arbitrator. In many instances, after the third is chosen, you might as well call for your decision. The introduction of evidence or the argument of your case will be of no avail.

It is different with a court. A court is a continuous body. All its proceedings are matters of public record. Its members are chosen by the votes of the people or by appointment of an executive. In case of error, ordinarily, an appeal can be had. Respect for courts is thoroughly ingrained into the nature of all English-speaking people. A man who has no respect for the courts of the land, of course has no faith in any human institution. Courts for years have been enforcing their decrees, have been compelling the attendance of witnesses and of parties, and have been administering justice to the general satisfac-

tion of all the people. It is the glory of Anglo-Saxon jurisprudence, first that it affords a remedy for every wrong; and second, that through its instrumentalities justice is administered impartially and in accordance with established rules, not by the caprice of the presiding judge.

We have heretofore made feeble attempts toward the establishment of industrial justice by means of legislation. We have a law prohibiting the employment of young children in certain lines of work. We have a law fixing the hours of labor for women and children, and a minimum wage. We have provided for the inspection of mines and factories, and for the enforcement of sanitary and safety precautions. We have our safety appliance act. We have laws establishing free employment agencies under certain conditions and governing the activities of commercial employment agencies. We have our workmen's compensation act in many of the states, by the terms of which, in Kansas at least, we specifically name a large number of industries and employments which the law arbitrarily declares to be extra hazardous. We go farther and say that the hazard becomes greater as the number of workmen increases, and that, therefore, all persons, firms and corporations engaged in these hazardous lines of industry, who employ five or more workmen, shall be within the provisions of this act. Then we tell the employer how much he shall pay his workmen for the loss of an eye, a finger, a toe, a hand, or for any other injury he may sustain in the line of his duties. We tell him how much he shall pay the dependents of any laborer who may lose his life while in that employment. We have other laws of like nature too numerous to mention here, but as yet we have no law by the terms of which such an industrial dispute as has recently arisen between the steel trust and its employees, between the

coal-mine operators and their employees and between railroad companies and their employees can be adjudicated.

The new industrial code should provide that all lines of industry whose business affects the production or distribution or cost of the necessaries of life be impressed with a public interest, because they affect the entire public, and that in case of any dispute which may affect the operation of such industries, the matter shall be brought into court, investigated and adjudicated. The rights of each individual should be protected. If an individual desires to work as a member of a labor union, that fact should not be held against him. If he desires to go it alone as a private American citizen, that fact should not be against him. His rights should be guaranteed just the same. Every labor union should be made responsible by taking out a charter or by some other means provided by law; and the strike, the lockout, the boycott, and the black list, all should be prohibited and penalized.

Under this new industrial code all such industries should be operated continuously unless a court of competent jurisdiction should find just cause for permitting a discontinuance. Why should the coal operators, the meat packers or the manufacturers of flour be permitted to curtail production in order to increase prices any more than a railroad company should be permitted to cease the operation of a portion of its trains in order to increase freight rates? It requires but a very moderate extension of the principle announced 250 years ago by old Sir Matthew Hale, when he said that even the king must be subject to the regulation by law if he operated a public utility, to justify a legal enactment which would require all these various industries, whose operations affect the living conditions of the American people, to be under the supervision of courts and commissions to the same

extent as common carriers and other public utilities are today. Correspondingly, it requires a very meager extension of that same principle to make proper legal requirements which prevent organized labor from hindering, delaying or in any way restricting the operations of such industries so affecting living conditions of the American people.

But some will say we can't compel a man to work in these various industries. Well, we have never tried to compel capital to invest in them, have we? But capital seeks investment and labor will seek employment. Let labor be assured of a fair and able tribunal before which it can always appear to have its rights protected, and labor, at least so far as it represents American citizenship, will gladly give up the strike, the boycott and other industrial weapons which it has been using with such poor results.

I am mindful of the fact that some of the representatives of organized capital, in times past, and more recently some of the dignitaries of organized labor, have so far *lost their heads* as to declare that they would not obey the laws of Congress or the decrees of the courts of the land. I would advise those egotistic gentlemen to take sober counsel before they proceed to carry out these Falstaffian boasts.

These worthies who are announcing that they will not obey the laws of the land might take advice from some of their kindred spirits who defied the draft law, or who refused allegiance to the government of the United States during the late unpleasantness. They might learn something of value to them by inquiring of the officers and members of the more or less lamented whisky trust, or they might enter one of the elegant barrooms in the erstwhile wet district and inquire of the disconsolate, dis-

couraged and dejected-looking gentleman behind the bar, as he mixes lemonades and pours out ginger ale, and find out what he thinks is the best thing to do when Uncle Sam speaks. Or, if not satisfied with that kind of advice, there is a bent and haggard old wood sawyer over in Holland who could tell them what happens to a man who boasts that he will stand for no foolishness from the United States of America.

Is there a labor problem? No. We minimize its importance if we call it a labor problem. It is an industrial problem of a nature so serious that it vitally affects every man, woman and child under the flag. In going about its solution we should keep our hearts warm and our heads cool. It must be solved according to lawful formulas. In our country the law is supreme. But the law should also be *just*. Every American citizen must have the opportunity to provide himself and his family with a decent and comfortable home, wholesome food and clothing, and means of moral and intellectual advancement. To that end wages of labor, as well as returns upon capital, must be protected by law. We have dethroned King Alcohol. His tyranny and his power are ended. That accomplished, we ought to be able within this generation to abolish the unsanitary tenement and the ragged hovel, and give to every child born under the stars and stripes a real home.

During the past five years we have learned beyond the peradventure of a doubt that in time of crisis the American people, with practical unanimity, will support their government to the extreme limit. Our enemies have learned that fact to their sorrow.

A story is told of one of Napoleon's soldiers who had been wounded in the breast, that he said to the surgeon treating his wound, "Cut a little deeper, sir, and you will

find the image of my emperor." Gentlemen, within the deepest recesses of the soul of the average American citizen will be found indelibly impressed a monogram which, when deciphered, is found to be composed of three magic letters—U. S. A.

THE KANSAS INDUSTRIAL ACT

BE it enacted by the Legislature of the State of Kansas:

SECTION 1. There is hereby created a tribunal to be known as the Court of Industrial Relations, which shall be composed of three judges who shall be appointed by the governor, by and with the advice and consent of the Senate. Of such three judges first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, said terms to begin simultaneously upon qualification of the persons appointed therefor. Upon the expiration of the term of the three judges first appointed as aforesaid, each succeeding judge shall be appointed and shall hold his office for a term of three years and until his successor shall have been qualified. In case of a vacancy in the office of judge of said Court of Industrial Relations the governor shall appoint his successor to fill the vacancy for the unexpired term. The salary of each of said judges shall be five thousand dollars per year, payable monthly. Of the judges first to be appointed, the one appointed for the three-year term shall be the presiding judge, and thereafter the judge whose term of service has been the longest shall be the presiding judge: *Provided,* That in case two or more of said judges shall have served the same length of time, the presiding judge shall be designated by the governor.

SEC. 2. (*a*) The Court of Industrial Relations shall have such power, authority and jurisdiction, and shall perform such duties as are in this act set forth.

(*b*) In any matter pending before the Court of Industrial Relations, if it shall be brought to the attention of such court that there is a matter pending before the Public Utilities Commission in relation to the rate charged by the employer, the Court of Industrial Relations may order such matters to be heard and determined at the same time by such commission and Court of Industrial Relations, sitting as one body, the presiding judge of said Court of Industrial Relations presiding, and in case of a tie vote, the presiding judge of said Court of Industrial Relations shall cast an additional vote.

SEC. 3. (*a*) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to-wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel,

or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(*b*) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act.

SEC. 4. Said Court of Industrial Relations shall have its office at the capital of said state in the city of Topeka, and shall keep a record of all its proceedings which shall be a public record and subject to inspection the same as other public records of this state. Said court, in addition to the powers and jurisdiction heretofore conferred upon, and exercised by, the Public Utilities Commission, is hereby given full power, authority and jurisdiction to supervise, direct and control the operation of the industries, employments, public utilities, and common carriers in all matters herein specified and in the manner provided herein, and to do all things needful for the proper and expeditious enforcement of all the provisions of this act.

SEC. 5. Said Court of Industrial Relations is hereby granted full power to adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: *Provided, however*, That in the taking of testimony the rules of evidence, as recognized by the supreme court of the state of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations; and testimony so taken shall in all cases be transcribed by the reporter for said Court of Industrial Relations in du-

plicate, one copy of said testimony to be filed among the permanent records of said court, and the other to be submitted to said supreme court in case the matter shall be taken to said supreme court under the provisions of this act.

SEC. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act.

SEC. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common car-

riers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney-general of the state of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, to proceed and investigate and determine said controversy in the same manner as though upon its own initiative.

After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be thereafter conducted insofar as the matters determined by said court are concerned.

SEC. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living condition, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act: *Provided,* All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare. Service of such order shall be made in the same manner as service of notice of any hearing before said court as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said

Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered.

SEC. 9. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

SEC. 10. Before any hearing, trial or investigation shall be held by said court, such notice as the court shall deem necessary shall be given to all parties interested by registered U. S. mail addressed to said parties to the post office of the usual place of residence or business of said interested parties when same is known, or by the publication of notice in some newspaper of general circulation in the county in which said industry or employment, or the principal office of such utility or common carrier is located, and said notice shall fix the time and place of said investigation or hearing. The costs of publication

shall be paid by said court out of any funds available therefor. Such notice shall contain the substance of the matter to be investigated, and shall notify all persons interested in said matter to be present at the time and place named to give such testimony or to take such action as they may deem proper.

SEC. 11. Said Court of Industrial Relations may employ a competent clerk, marshal, shorthand reporter, and such expert accountants, engineers, stenographers, attorneys and other employees as may be necessary to conduct the business of said court; shall provide itself with a proper seal and shall have the power and authority to issue summons and subpœnas and compel the attendance of witnesses and parties and to compel the production of the books, correspondence, files, records, and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpœna issued by said court after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna. Employees of said court whose salaries are not fixed by law shall be paid such compensation as may be fixed by said court, with the approval of the governor.

SEC. 12. In case of the failure or refusal of either party to said controversy to obey and be governed by the order of said Court of Industrial Relations, then and in that event said court is hereby authorized to bring proper proceedings in the supreme court of the state of Kansas to compel compliance with said order; and in case either party to said controversy should feel aggrieved at any

order made and entered by said Court of Industrial Relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the supreme court of the state of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises. In case of such proceedings in the supreme court by either party, the evidence produced before said Court of Industrial Relations may be considered by said supreme court, but said supreme court, if it deem further evidence necessary to enable it to render a just and proper judgment, may admit such additional evidence in open court or order it taken and transcribed by a master or commissioner. In case any controversy shall be taken by either party to the supreme court of the state of Kansas under the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter.

SEC. 13. No action or proceeding in law or equity shall be brought by any person, firm or corporation to vacate, set aside, or suspend any order made and served as provided in this act, unless such action or proceeding shall be commenced within thirty days from the time the service of such order.

SEC. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of Industrial Relations through and by its proper officers, attorneys or other representatives. The right

of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: *Provided*, That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as their agents or trustees with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of section nine of this act.

SEC. 15. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons, or corporation, shall have invoked the jurisdiction of said court in any matter provided for herein.

SEC. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

SEC. 17. It shall be unlawful for any person, firm or corporation, or for any association of persons, to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any persons, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to

perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers: *Provided,* That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing," or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act.

SEC. 18. Any person willfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed $1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

SEC. 19. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to his official position, or to his position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the state penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment.

SEC. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: *Provided,* That a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

SEC. 21. When any controversy shall arise between

employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement, and with the consent of the court, refer the same to the Court of Industrial Relations for its findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon said court shall proceed to investigate, hear, and determine said controversy as in other cases, and in such case the findings and orders of the Court of Industrial Relations as to said controversy shall have the same force and effect as though made in any essential industry as herein provided.

SEC. 22. Whenever deemed necessary by the Court of Industrial Relations, the court may appoint such person, or persons, having a technical knowledge of bookkeeping, engineering, or other technical subjects involved in any inquiry in which the court is engaged, as a commissioner for the purpose of taking evidence with relation to such subject. Such commissioner when appointed shall take an oath to well and faithfully perform the duties imposed upon him, and shall thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the said court would have if sitting in the same matter. Said commissioner shall receive such compensation as may be provided by law or by the order of said court, to be approved by the governor.

SEC. 23. Any order made by said Court of Industrial Relations as to a minimum wage or a standard of wages shall be deemed *prima facie* reasonable and just, and if said minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive said minimum wage or standard of wages from the date of

the service of summons or publication of notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and said minimum wage or standard of wages so found and determined by said court in such order. It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in said investigation or proceeding: *Provided*, That in case said order shall fix a wage or standard of wages which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

SEC. 24. With the consent of the governor, the judges of said Court of Industrial Relations are hereby authorized and empowered to make, or cause to be made, within this state or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems such as may arise under the provisions of this act. All the expenses incurred in the performance of their official duties by the individual members of said court and by the employees and officers of said court, shall be paid by the state out of funds appropriated therefor by the legislature, but all warrants covering such expenses shall be approved by the governor of said state.

SEC. 25. The rights and remedies given and provided by this act shall be construed to be cumulative of all other

laws in force in said state relating to the same matters, and this act shall not be interpreted as a repeal of any other act now existing in said state with reference to the same matters referred to in this act, except where the same may be inconsistent with the provisions of this act.

SEC. 26. The provisions of this act and all grants of power, authority and jurisdiction herein made to said Court of Industrial Relations shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon said Court of Industrial Relations.

SEC. 27. Annually and on or before January first of each year, said Court of Industrial Relations shall formulate and make a report of all its acts and proceedings, including a financial statement of expenses, and shall submit the same to the governor of this state for his information. All expenses incident to the conduct of the business of said Court of Industrial Relations shall be paid by the said court on warrants signed by its presiding judge and clerk, and countersigned by the governor and shall be paid out of funds appropriated therefor by the legislature. The said Court of Industrial Relations shall, on or before the convening of the legislature, make a detailed estimate of the probable expenses of conducting its business and proceedings for the ensuing two years, and attach thereto a copy of the reports furnished the governor, all of which shall be submitted to the governor of this state and by him submitted to the legislature.

SEC. 28. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

SEC. 29. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 30. This act shall take effect and be in force from and after its publication in the official state paper.

IN THE

COURT OF INDUSTRIAL RELATIONS

STATE OF KANSAS

THE STATE OF KANSAS, on the Relation of RICHARD J. HOPKINS, Attorney-general, W. J. PRICE, P. C. HILLER, P. SULLIVAN, and CHARLES WHITE, *Complainants,*
vs.
THE TOPEKA EDISON COMPANY, a Corporation,
Respondent.

Docket No. 3254-I-2

OPINION

BY HUGGINS, *Presiding Judge*

The complainant Richard J. Hopkins is the attorney-general of the state of Kansas; the other complainants are residents of Topeka, Kan., are electrical workers, members of Local Union No. 841 of the International Brotherhood of Electrical Workers, and also members of a committee appointed by said local union to take action in the matter of the dispute and controversy hereinafter stated. The respondent, the Topeka Edison Company, is a corporation under the laws of the state of Kansas, and is engaged in the business of generating and selling electric current for lighting and power purposes. It supplies the

citizens of the city of Topeka, and also of the city of Oakland, in Shawnee county, Kansas, with current for lighting their houses and places of business. It supplies the current used as power by mills and numerous other industries, and also by the Topeka Street Railway Company, which operates the street-car system in said cities of Topeka and Oakland.

The complaint alleges the matters heretofore stated, and further that a controversy has arisen between the members of said local union and said respondent in the matter of hours of labor and wages. The complaint further alleges that said local union No. 841 has a membership of approximately forty members; that the individual complainants, as such committee have diligently endeavored to bring about a settlement and agreement with the respondent as to just and reasonable wages, but have failed to do so. The complaint further alleges that the individual complainants are duly authorized to represent said local union No. 841 and have requested the attorney-general of the state of Kansas to assist them in presenting their grievance to this court; and if said controversy remains unsettled, it will lead to other and further disputes and controversies between said workers and said respondents, and between employees and employers engaged in similar industries; and that it will endanger the continuity and efficiency of service of said utility and thereby endanger the orderly operation not only of said utility but of other industries relying upon said utility for current, for light, and for power, and that it will thereby endanger the public peace, health and general welfare.

The complainants pray that this court make due investigation and ascertain the facts, and after due hearing make such findings and prescribe such orders, rules and regulations, wages, and hours of labor as may be just and reasonable.

To this complaint the respondent answers, admitting its incorporation and the extent and nature of its business as alleged in the complaint, and admitting the controversy, and that said controversy is unsettled; and stating that the respondent has offered the complainants an increase in wages of two and one-half cents per hour, which complainants have refused, and are insisting upon an increase of ten cents per hour and the basic eight-hour day, etc. The answer denies all the other allegations stated in the complaint, but instead of the prayer usual in such cases the respondent in said answer states that it "respectfully submits and tenders the issue here presented, and welcomes the good offices of this court in a judicial determination of that which is equitable and just in the premises."

It would, therefore, seem that while originally this matter was filed as an action upon a controversy under the compulsory features of the industrial laws of the state of Kansas, it is now before the court more in the nature of a voluntary submission by mutual agreement of a dispute between the above parties under section 21 of the industrial act.

Under the provisions of the industrial laws of this state, this is a case of which this court has jurisdiction. The respondent is a public utility engaged in the extremely important business of furnishing electric current to the citizens of a community of some fifty thousand population. The controversy is of such a nature as that it may endanger the public peace, health, and general welfare, and the continuity and efficiency of the service. Section 6 of the industrial act provides:

"It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities, and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people

of this state may live in peace and security and be supplied with the necessaries of life."

In section 9 of the act is provided:

"It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor, and that capital invested therein shall receive a fair rate of return to the owners thereof."

Wholly aside from altruistic considerations, always vital in such cases, the intention of the legislature is plain and its wisdom cannot be doubted. These are the essential industries upon the continuous and efficient operation of which the people depend for the necessaries and comforts of life. It is, therefore, a matter of public interest that skilled and faithful workers should be always available in these industries. The legislature evidently considered that in order to insure skilled and faithful workers a fair wage must be paid and healthful and moral surroundings provided, else workers of the highest skill and fidelity would leave the employment of such institutions and seek a better wage and better conditions offered by enterprises of a private nature. The same reasoning applies with equal force to capital seeking investment.

The evidence in this case is very voluminous and covers a wide range of facts and conditions. There is very little conflict in it. The evidence shows conclusively that the workers who are represented by the individual complainants are skilled workers; that they have been employed, in most cases, by the respondent for a considerable length of time; that they have had sufficient experience and have acquired sufficient skill to be called "first-class" workers. Their fidelity is not questioned, and there seems to be no

feeling of animosity between the management of the respondent and the workers themselves. They are known as "linemen." They build and repair the transmission lines by means of which the respondent carries and distributes the current from its plant to its various customers. The work in which they are engaged is hazardous, owing to the fact that they are compelled, at times, to handle wires carrying 2,300 volts of electric current. One death has occurred in recent years and several serious accidents have taken place caused by workers coming in contact with "hot" wires. The evidence shows that many life insurance companies refuse to insure workers engaged in this line of work, and that many others, although accepting the risk, require a larger premium. The evidence also shows that it takes from three to four years' study and experience to fit persons to become first-class linemen.

For several years prior to 1916 workers of this class employed by the respondent were paid a daily wage of $2.75. In 1916 the wage was increased to $90 per month on the basis of a 26-day month and a nine-hour day. In May, 1919, another increase was granted whereby these workers received sixty cents per hour for a basic day of eight hours, with time and a half for overtime and double time for Sunday work.

A controversy has recently existed between the respondent and the employees in regard to the eight-hour day. It seems that the employees are required usually to report for work at the storehouse of the respondent, where they gather up their tools and such material as they may need to use for the day's work, place it upon a truck and proceed to the location upon the lines of the respondent at which they are to begin work for the day. Heretofore, time has begun when the men arrived at the point on the respondent's lines at which they were to begin work, and

they have not been paid for the time which they spent in the storehouse collecting their material and tools, or for the time spent on the way from the storehouse to the job. During the progress of the trial, however, the workers agreed to share equally with the company the time spent within, or in going to and from, the storehouse—the men to have credit for "two ways" and the company to have credit for "two ways." This proposition, in open court, was accepted by the respondent's manager and is therefore no longer a matter of controversy. The fairness of the proposition appeals to the court.

Prior to the year 1919, the workers were able to live and support their families reasonably upon the wage which they received. One of the workers testified that on his former wages he saved some money with which he bought Liberty bonds. This same worker, however, testified that under the new schedule of sixty cents per hour, or $4.80 per day, with the tremendous increase in the cost of living, he is unable to save anything and is unable to support his family as well as he did under the $2.75 per day or the $90 per month scale. The evidence clearly shows what is a matter of common knowledge—that the cost of living has increased to an enormous extent and that a considerable increase has occurred within the past year. Speaking approximately, the price of food had increased by November, 1919, over November, 1913, 100 per cent; clothing, 155 per cent; and furniture and furnishings, 156 per cent.

One of the workers also testified that he had bought none but working clothes for the past four years; that a pair of working shoes he formerly paid $2.50 for, last year he paid $6 for; and that this year they cost $9. He testified that he gave $3 for a pair of half-soles on his working shoes; that a pair of overalls, which formerly cost 90 cents or a dollar, now cost $2.85. The evidence

shows that the cost of the coal used by these employees in 1916 and 1917 was $4.50 a ton, while during the past winter the price of the same coal was $10.50 a ton. The evidence also shows that decently habitable houses in the city of Topeka rent for from thirty per cent to fifty per cent more than they did a few years ago. It is only fair, however, to state that the evidence shows a slight decrease in the price of some food products within the last month or six weeks, and it is hoped that there will be a further decline in these unprecedented and exorbitant prices.

While the scale of wages for this kind of mechanical work at Topeka is only $4.80, at Wichita and Kansas City, Kan., it is $6 per day. The same class of work in the building trades in Topeka is $7 per day and at other places, somewhat higher than that. The evidence shows, however, that while the employment of these outside linemen is practically continuous, the inside or building trades men are engaged in work which is more or less seasonable in its character and not continuous. The outside linemen—first-class men, such as the complainants—at Abilene get 60 cents per hour; at Leavenworth, $90 per month; at Lawrence, 42 cents per hour; at Manhattan, $110 per month; at Junction City, 42 cents per hour; at Pittsburg, 60 cents per hour; at Atchison, 60 cents per hour. These are smaller towns where fewer men are employed and are probably not as comparable with Topeka as are Wichita and Kansas City, both of which are approximately the same sized towns as Topeka.

The foregoing seems to the court to state the essential facts of the case. The only controversy left to be settled is the controversy as to the wages to be paid. The court is commanded by the people of this state, speaking through the state legislature, to assure to these workers a fair wage, and to this utility a fair rate of return upon its property used and useful in the service of the public. The

question, therefore, which we must now decide is: What is a fair wage? The Congress of the United States in the recent railroad legislation declared that:

"In determining the justness and reasonableness of such wages and salaries or working conditions the Board shall, so far as applicable, take into consideration among other relevant circumstances:

"(1) The scales of wages paid for similar kinds of work in other industries;

"(2) The relation between wages and the cost of living;

"(3) The hazards of the employment;

"(4) The training and skill required;

"(5) The degree of responsibility;

"(6) The character and regularity of the employment; and

"(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments."

To the points enumerated by Congress, this court, in view of the almost universal complaint as to inefficiency and lower production in all lines of industry, desires to add another, to wit:

(8) The skill, industry, and fidelity of the individual employee.

A living wage may be defined as a wage which enables the worker to supply himself and those absolutely dependent upon him with sufficient food to maintain life and health; with a shelter from the inclemencies of the weather; with sufficient clothing to preserve the body from the cold and to enable persons to mingle among their fellows in such ways as may be necessary in the preservation of life. But it is not a living wage only which this court is commanded by the people of this state to assure workers engaged in these essential industries. The statute uses the word "fair" and commands us to assure to these workers a "fair" wage. What is a fair wage? Upon this subject, of course, there may be a great variety of opinions expressed. It seems safe to say, however, that the cir-

cumstances above enumerated should be considered in arriving at a conclusion as to what constitutes a fair wage. The skilled worker, in fairness, should have a higher wage than the unskilled worker. The worker who has spent years of time and effort in preparing himself for a peculiarly technical line of work is entitled to greater consideration from the public than the more unskilled worker. The hazards of the employment should also be noted and the worker engaged in such an employment as that under consideration should receive a higher wage than his fellow who may be engaged in a safe occupation. The degree of responsibility placed upon the worker is a matter of importance. The continuity and regularity of the employment should be considered, for it is apparent that an employment which is seasonable in its nature must have a higher wage than one in which regular, steady work is offered, because, after all, it is the annual earnings that are to govern rather than the daily wage, in many instances. By no means the least important consideration should be the industry and fidelity of the individual, for the worker who is faithful to his trust and is industrious, working to the best of his ability in the interest of his employer, is entitled, as a matter of right, to a greater reward than the worker who thinks only of his wage and not of the interest of his employer and of the public who are directly affected by his labors. Perhaps more important than any other circumstance, however, is the relation of the wage to the cost of living.

In all these respects the complainants herein represent a class of workers who measure up to the best standard and are called "first-class workers" as well as "skilled workers." Such persons, in all fairness, are entitled to a wage which will enable them to procure for themselves and their families all the necessaries and a reasonable share of the comforts of life. They are entitled to a wage which

will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age.

The industrial statutes, however, empower this court to fix only a minimum wage, and in fixing said wage to state a reasonable time which said wage shall continue or until changed by agreement by the parties with the approval of the court. It is not, therefore, for the court to fix a maximum wage. The minimum may be fixed and the maximum must depend upon the skill, fidelity and industry of the employee, the fair and equitable disposition of the employer, the prosperity of the business, and other economic circumstances.

In view of all the matters heretofore stated, the court finds that the agreement made in open court with regard to a division between the complainants and the respondent of the time taken at the storehouse, and between there and the job, is a fair and reasonable practice and regulation and should be enforced as stated herein. The court further finds that the wage paid by the respondent to the complainants is unreasonably low and is not a fair wage to be paid to these complainants and other workers similarly situated and employed by the respondent because of the present unprecedented cost of living and other facts and conditions herein stated: and that a fair minimum wage to be paid the complainants and others similarly situated and employed by the respondent at this time is sixty-seven and one-half cents (67½ cents) per hour on the basis of an eight-hour day, time and a half for overtime and double time for Sundays. The court further finds that said rules

and practices and such minimum wage should be instituted on the first of the ensuing calendar month and should continue for a period of six months thereafter unless changed by agreement of the parties with the approval by the court.

An order will issue accordingly.

Judges Reed and Wark concur.

IN THE

COURT OF INDUSTRIAL RELATIONS

STATE OF KANSAS

THE AMALGAMATED ASSOCIATION OF STREET AND ELECTRIC RAILWAY EMPLOYEES OF AMERICA, LOCAL UNION No. 497, *Complainants,*

vs.

THE JOPLIN & PITTSBURG RAILWAY COMPANY,
Respondent.

Docket No. 3,653

OPINION

December 9, 1920.

BY HUGGINS, *Presiding Judge*

This is a complaint on the part of certain organized workers, employees of the Joplin & Pittsburg Railway Company, in which, in substance, they state that they have heretofore worked for the company under a contract which expired August 1, 1920; that the company and the officers of the local union have attempted to negotiate a new contract; that they have agreed upon a large part of the contract, but that there are elements upon which they are unable to come to an agreement. They state facts and have proved facts in this case sufficient to give this court jurisdiction of the matter. The prayer of the complaint is, in substance, that this court take jurisdiction of

the controversy; that the matter be heard and investigated according to law, and that the court make such findings of fact as may be necessary to preserve the public peace and welfare and protect the status of the parties and the public interests involved herein; to find what is a fair, reasonable and just wage; and to make such findings with regard to the terms of the proposed contract as may be just and reasonable in the premises.

The complainants herein have all been granted an increase in wages by this court since the latter part of April, 1920. In the present complaint they are demanding an additional increase in wages. Some additional testimony as to living costs was introduced in the present case, and it was agreed in open court that the court might take into consideration all the evidence introduced at the former hearings in cases between the same parties as to the cost of living in Pittsburg, Kan., and vicinity. The evidence does not show an increase in the cost of living since the former adjudication referred to. There has been an increase in some commodities, but the evidence fairly shows that such increases are offset by other decreases in the cost of the necessaries of life, and that there is a general tendency toward a decrease in living costs. This decrease has not yet materially affected the ultimate consumer, but there is at least no evidence of an increase in living costs. The court upon all the evidence, is satisfied with the minimum wage scale heretofore provided by the court's orders in cases between the same parties. The court holds that the complainants are now receiving, under orders of this court, a fair wage in the sense of the Kansas industrial law, and that further increases at this time would not be justifiable.

The complainants desire a clause in the new contract requiring the company to employ three men on freight trains that handle three or more cars at the same time.

Considerable evidence was taken upon this point, but, on the whole, the court feels that the employment of the third man upon the short freight trains usually hauled by this electric interurban company would be of no public benefit and would add an unjust burden upon the respondent, which would ultimately be reflected in lower wages to the the men, or poorer service to the public.

The complainants further desire a clause requiring, on extra runs, to pay at least wages for four hours per day for each day the extra man is called and works. In the opinion of the court, this clause should be inserted in the new contract, so worded as to provide that extra men should receive a daily wage that shall pay a minimum wage scale of four hours for each day they are called and actually work.

The complainants also desire a clause in the contract to the effect that all regular runs shall pay at least eight hours a day, to be completed in nine consecutive hours, and time and a half to be paid for all over eight hours. In the opinion of the court, this clause should be inserted in a modified form, so that all regular men, when working at all as regular men, shall receive a wage of at least eight hours for each day they work. The evidence shows that the public necessities in the community served by this electric interurban railway company are such that eighteen hours' service should be given in each day. The evidence also shows that the men are now working upon that basis in two shifts of nine hours each, but that sometimes, owing to various unavoidable conditions, a man on a certain car may be delayed in getting into the barn, so that the day extends a little more than nine hours. The court is of the opinion that the working day should not exceed nine hours, except in cases of some unavoidable delay, as above indicated. It might be necessary to take a few minutes longer in which to get to the car barn. Therefore, this

clause should be modified so as to give the eight hours' pay as stated, to be completed in not to exceed nine hours and thirty minutes, with time and a half for all time over nine hours.

The complainants further desire a clause in the contract requiring time and a half to be paid all barn and shop men for working on Sundays. Upon this point the court is of the opinion that no work should be done in the shops and barns on Sundays except such as is absolutely necessary. No mechanical work should be required unless it would be impossible to operate to full capacity on Monday morning without such mechanical work being done on Sunday. The work in the barn should be limited, so far as possible, to the cleaning of cars for the Monday morning run, or for the Sunday run. This business, under the necessities of the case, must operate seven days in the week. However, it is not, in the opinion of the court, proper to penalize the company for Sunday work which is absolutely necessary. The court recommends that the parties place in the contract a clause limiting Sunday work as above stated, but leaving the pay for Sunday work straight pay instead of time and a half.

The testimony in this case showed that up to about August, 1920, the men in the car barns were employed on a ten-hour basis at 42 cents per hour. Subsequently the working schedule was reduced to an eight-hour basis. It was testified both by the company officials and the employees that the amount of work turned out by the same or a smaller number of men working eight hours was equal to that formerly handled on a ten-hour basis. The effect of the change in the working schedule was to reduce the compensation of car-barn employees to the extent of two hours per day, or one-fifth of their total wage. In view of the fact that it is agreed that the amount of work performed by these men on an eight-hour basis is as much as

was performed formerly on a ten-hour basis, the court feels that the equities of the situation would be preserved if the company would adjust the compensation until April 1, 1921, on a basis of the equal of nine hours' pay for eight hours' service. Such an act would be a recognition of the higher efficiency at which the men are now working and would afford some relief to the employees during the period of readjustment downward of living costs.

One of the principal contentions of the complainants is that the eight-hour day should be established in this business. Upon this point considerable testimony was taken, and the hearing was continued for the purpose of permitting the chief accountant of this court to go to Pittsburg and go over the books and records of the company, to meet the men and see if it would be possible to figure out a schedule of trains whereby the eighteen-hour service required by the community might be divided into three shifts, so that the men could do the work in eight-hour shifts instead of nine. After considerable study, and after consulting with the management and with the men at Pittsburg, our chief accountant worked out a schedule for the operation of these trains upon the eight-hour basis, but with considerable additional cost to the company. Upon the further hearing of the case, however, when the question was presented, the representatives of the men took the position that they must have the same pay for the eight-hour day which they are receiving for the nine-hour day, and according to the figures of our chief accountant, which were uncontroverted at the trial, this would put an additional financial burden upon the company in excess of $25,000 annually. Now, while that is not a very large sum and would not be a burden to a big railroad company, yet as stated in previous opinions of this court, this company is operating now on a very close business margin. In fact, the evidence before us shows that in order to pay

fixed charges, including interest upon a reasonable bonded indebtedness not in excess of the actual value of the property, the company would have to take from its depreciation fund if it is to pay reasonable rates of interest, which the evidence shows it is required to pay. It is plain, therefore, to put an additional burden of $25,000 a year upon this company is a matter of serious concern to the company itself and to the community which it serves. This court would not hesitate to place that burden upon the company if it were necessary to do so in order to provide a fair wage and reasonable working conditions. As stated in Docket No. 3,283, wages must come before dividends, and a business which cannot pay a fair wage and at the same time earn a reasonable return must eventually liquidate.

This brings us to the question: Is a nine-hour day in the street or interurban railway business an unfair day to labor? In the opinion of the court, no arbitrary rule can be fixed as to the length of a working day. In many vocations, such as deep-shaft mining, working in smelters, glass factories, steel mills, around furnaces, or where there are conditions detrimental to the health, or where the work is so arduous as to be a severe tax upon the strength, a six-hour day may be too long. In many lines of labor a longer day would be unreasonable and unfair. It depends upon the nature of the work. It depends upon the physical or mental strain. Now, there is another question which should also be considered in determining the proper length of a working day. No matter how light the work may be, how little the mental or physical strain, there comes a limit in the length of a working day beyond which you cannot go without invading the social rights of the worker. Every worker is entitled to live the life of a human being. Every worker is entitled to a reasonable time for rest, for recreation, for self-improvement, for

social diversion, for the family circle. The working day may be so long as to invade these social rights, even though the mental and physical strain be a matter of little consequence. It is the opinion of the court that a nine-hour day does not unduly deprive the worker of these social privileges. Now, the mental and physical strain of operating a street car are not excessive. There are no unhealthy conditions about it, there are no obnoxious fumes or gas, there are no great hazards, there is no severe mental strain. There is considerable responsibility and some skill required, but the men are sheltered from the storm and there is no extreme hardship about the business. In consideration of all these circumstances, it is the opinion of the court that the nine-hour day in this particular occupation is not unfair to the worker. The court will not, therefore, require the respondent in this case to institute an eight-hour-day system.

Some specific features of the proposed contract are submitted to us. Section 2 of the contract has not been agreed to. It refers to the number of men which shall constitute a crew, and provides that motormen and conductors shall constitute a crew. This brings up the question of the three-man crew on freight trains, and it is the opinion of the court that section 2 should be agreed to by the men.

Section 5, in the opinion of the court, should be agreed to with the last sentence thereof stricken out. This is a minor matter, and we feel that the rule is fair with the last sentence stricken out.

Section 6 should be accepted and agreed to with the figure "8" inserted before the word "hours" in the first blank, and the figure "4" inserted before the word "hours" in the second blank. This will provide that regular passenger runs shall pay not less than eight hours, and that any park run posted on the board shall be not less than four hours.

Another important matter was called to our attention, and that is the length of the working day for freight-train crews. The evidence shows that the working day is eleven hours, with time and a half for over time, but that the average working day is much more than eleven hours, being between twelve and thirteen hours. Of course, this includes the noon hour. The freight crews take their lunches with them and stop at some convenient place in their work, while waiting for passing trains, or for other reasons, on the sidetrack, and eat their lunches. However, this working day is entirely too long. It is so long as to be very trying upon the physical strength of the men and it encroaches unduly upon their social rights. The circumstances are hard to adjust to a reasonable work-day. The freight business of the road is so small and the circumstances under which the freight business is conducted are such as to make this a difficult question. Nevertheless, this court cannot sanction so long a working day. It is so unfair to the men that, as a matter of public policy, it should not be permitted. With the freight crews, however, the work is only for six days in the week, so that the men have their Sundays free. The court very much regrets its inability to make an order requiring all of the employees of this company to have Sundays off. In the matter of the freight-train crews it is possible to have the six-day week. In view of all the facts, it is the opinion of the court that the working day for the freight-train crews should be on the basis of a nine-hour minimum and a ten-hour maximum, including the lunch period in the middle of the day, with time and a half after ten hours.

Section 7, as set out in the proposed contract, should be stricken out and the following, in substance, should be substituted therefor:

"All regular freight and work-car runs shall be scheduled, when possible, on a basis of a nine-hour minimum and a ten-

and-one-half-hour maximum day, with nine hours' minimum pay, except on holidays, when company's freight depots are not open for the receipt and shipment of freight. Overtime shall be paid after ten hours. On holidays the freight and work-car crews shall be given, if they so desire, any extra train service possible. On July 4 and Labor Day freight and work-car crews shall be subject to call for extra work. After a trainman has worked 65 hours in regular freight or work-car service in any six consecutive days, he shall be relieved, providing competent extra men are available. Extra service and extra runs shall be handled as provided for in this contract."

If the contract shall be rewritten so as to include the suggestions of this court, and if the men will comply with section 14 of the industrial act by authorizing in writing some person as their agent to sign for them, and if the contract shall be executed in accordance with the provisions of said section 14, this court will approve the same.

W. L. HUGGINS,
C. M. REED,
GEORGE H. WARK,
Judges.

IN THE

COURT OF INDUSTRIAL RELATIONS

STATE OF KANSAS

In the matter of the investigation concerning the continuity of production in the flour-milling industry at Topeka and other points in the state of Kansas.

Docket No. 3,803

OPINION

December 20, 1920.

By Huggins, *Presiding Judge*

This is an original investigation instituted by the court under the provisions of the Kansas industrial law, which confers authority and jurisdiction upon the Court of Industrial Relations to investigate matters affecting the manufacture of food products. Citations were issued in this investigation and served upon the Topeka Flour Mills Company, the Shawnee Milling Company, the Ismert-Hincke Milling Company, the Interocean Mills, the Thos. Page Milling Company, the Forbes Milling Company, and the Kaw Milling Company—these being all of the flouring mills located at Topeka, Kan.

The occasion of this investigation was the information, which came to the court in an informal way, that the flouring mills located in Topeka, Kan., were reducing production. The seven milling companies above named ap-

peared in court, by their managing officers, without counsel, and submitted themselves to the jurisdiction of the court for the purposes of investigation. A preliminary investigation was had on December 3, 1920, and an adjournment was taken for the purpose of giving the millers time in which to prepare certain statistical information from their books. On the 15th day of December, 1920, the investigation was resumed and an entire day was spent in the taking of testimony. The millers of Topeka were apparently very frank with the court and supplied all the information called for without protest. The court now feels that it has a fairly accurate knowledge of the conditions confronting the Topeka mills. The court, on its own motion, also took the testimony of a number of millers from other parts of Kansas, and developed, as fully as could be done under the circumstances, the general milling conditions of the state. The testimony shows a great variety of facts which will be hereinafter discussed to some extent; but the big outstanding fact seems to be that there has been no cessation of operation in any general sense, but that owing to conditions hereinafter mentioned, the mills of Kansas generally are running at about 60 per cent capacity. This 60 per cent capacity is based upon a twenty-four-hour-per-day operation. It will, therefore, be seen that the mills are actually operating between twelve and fifteen hours per day.

Several provisions of the Kansas industrial law should be considered in arriving at a conclusion in this matter. The legislature declares in section 3 of the law that certain industries and vocations are "affected with a public interest," and that such industries and vocations are therefore "subject to supervision by the state as herein provided, for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing the regular and orderly

conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare."

In section 6 of the act we find the following: "It is hereby declared and determined to be necessary for the public peace, health, and general welfare that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security and be supplied with the necessaries of life." The same section prohibits any person, firm or corporation from hindering, delaying, limiting or suspending "such continuous and efficient operation as aforesaid, except under the terms and provisions provided in this act."

Under the terms or provisions of section 16 of the act it is provided that such industries as "may be ordinarily affected by changes in seasons, market conditions, or other reasons or causes inherent in the nature of the business," may apply to the court for an order fixing rules, regulations and practices to govern the operation of such industries for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries.

By section 20 of the act it is provided that if the suspension, limitation or cessation of operation of any such industry shall "seriously affect the public welfare by endangering the public peace or by threatening the public health," then the Court of Industrial Relations may, under proper proceedings, take over the operation and control of such industry "during such emergency." By said section 20 it is also provided that in such case a "fair return and compensation shall be paid to the owners of such industry" during the time of such operation by the public authorities.

By section 9 of the act we find the following declaration: "It is hereby declared necessary for the promotion of the general welfare that the workers engaged in any of said industries . . . shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair return to the owners thereof."

A reasonably careful study of the provisions of the law above cited will show that it was not the purpose of the legislature to invest this court with any authority to take over and operate the business except in case of great public necessity—in other words, in case of an emergency—and that the regulatory powers provided are to be exercised by this court in the spirit of fair play toward the industry, toward the public, and toward the employee. A "fair wage," a "fair rate of return" and a "reasonable continuity" of production, to the end that "the people of this state may live in peace and security and be supplied with the necessaries of life"—these are the objects of the limited regulatory power over such industries conferred upon this court by the legislature.

About one year ago a great crisis in the production of fuel occurred in this state. At that time in this prairie state of Kansas every coal mine was closed. No coal was being produced. There was a dire shortage of fuel; the weather was extremely cold. Public utilities were rendering only part service in order to conserve fuel; schools were closing; churches had ceased to hold their usual services; even the sick in hospitals were in danger of suffering from the cold. In practically every home of the state great care was being taken to limit the consumption of coal; in many places people were standing in line at city offices with coal cards in their hands, shivering in the winter blast, waiting for an opportunity to procure a small quantity of coal for household use. So great was the

emergency at that time that the state took over the coal mines, and by volunteer labor produced coal to relieve the immediate necessities of the people.

The conditions of the flouring-mills industry in Kansas at this time, as shown by the evidence in this case, are the direct opposite from the conditions above stated with reference to the fuel industry one year ago. The evidence in this investigation shows that the elevators in most instances are full of wheat waiting to be milled; that the flour-storage capacity of the mills is practically full; that the price of flour is falling and is now considerably below what it was three months earlier; that the grocery stores have no trouble in getting full shipments of all flour orders; that the mills are readily accepting all orders they can get at current prices, and promptly shipping out the same; and that there is no shortage of flour anywhere in the state. Furthermore, the evidence shows that because of the declining markets, wholesale and retail merchants are ordering only small quantities of flour for immediate needs and that housewives are buying in much smaller packages than usual, showing that the general feeling of the public seems to be that there will be a still farther decline in the price of flour, and therefore prudence dictates that only a small quantity should be purchased at the present price. It is apparent, therefore, that there is no public emergency in the flour-milling industry at this time such as would warrant the intervention of the court to take over the operation of the industry as provided in section 20 of the industrial act. The only remaining question then is: Are these seven milling concerns guilty of limiting production "for the purpose of evading the provisions or intent of this act," or to "affect prices"? If they are guilty of such unlawful limitation of production, then an order should be made by this court requiring such continuity of production as may be proper, and if said order be dis-

obeyed, then prosecution should be instituted under the penal features of the law. In this regard the Kansas industrial act treats capital invested in the essential industries more severely than it does labor engaged in the same. The law specifically provides that "nothing in this act shall be construed as restricting the right of any individual employee . . . to quit his employment at any time." In other words, the legislature recognized capital invested in the essential industries as a commodity, while labor was regarded on a very different plane. The liberty of the laborer to work or not to work as he may choose is guaranteed by the industrial law, while the right of capital to close down and cease operations is regulated by the law in the interest of the public welfare.

A "reasonable" continuity of production is required by the statute. The word "reasonable" has a well-understood meaning, and no legal definition can clarify it to any great extent. The evidence here shows an average operation of more than twelve hours per day. The evidence shows that such operation has resulted, and is resulting, in an adequate supply of flour to fill all orders and an adequate quantity of flour to fully and completely supply the public. Furthermore, the evidence shows that 90 per cent of the cost of the finished product is the original cost of the grain from which the flour is made. The evidence shows such a fall and fluctuation in the price of wheat as to cause a corresponding fall in the price of flour. This fall in the price of flour seems to account for the slow market for the same; at least the evidence before us is very convincing upon that point. The court cannot say from the evidence before it that these mills have limited production for the purpose of affecting the price nor that the operation is not being conducted with reasonable continuity.

The testimony is most interesting. It throws considerable light upon world market conditions. Many elements

seem to contribute to the present unsatisfactory condition of the wheat and flour market. Among others may be noted:

1. A very small percentage—perhaps five or ten per cent—of the production of the Kansas mills is used within the state of Kansas. The Kansas mills depend upon the world's market. Kansas mills, even since the close of the World War, have been selling flour in several countries of South America, in Mexico, in Egypt, and in most of the countries of Europe, as well as in the eastern portions of the United States.

2. There is a tremendous surplus of the Canadian wheat crop, which is now being marketed to a considerable extent in the United States duty free.

3. There is an immense wheat crop in Australia now being harvested.

4. There is a big wheat crop in the Argentine Republic, which is soon to be harvested.

5. The European peoples are so poverty stricken as to make them poor customers for American flour.

6. There is a differential in favor of wheat shipments rather than flour shipments instituted by the American Shipping Board (formerly 25 cents per hundred, but recently reduced to 5 cents per hundred).

7. The condition of foreign exchange makes it possible for the Canadian wheat merchant to sell his wheat in the States, taking back American dollars, which are worth $1.10 in Canadian money.

8. There are reciprocal trade relations between Great Britain and Canada whereby the British banks are able to use the pound sterling in Canadian trade at only 10 per cent discount, which if used in the States would bear a discount rate of about 30 per cent.

9. There is a general trade policy of the British government whereby substantial preference is given to the over-

seas dominions of the British empire in all trade relations, and especially as to ocean traffic upon British ships.

All these questions might profitably engage the attention of the greatest statesmen and diplomats of the world. The members of this court do not feel themselves able to accurately judge as to the influence which may be exerted upon the wheat and flour markets by these various circumstances. As stated before, the evidence along these lines was very interesting and seems to throw some light upon the causes of the present condition. Unquestionably the testimony shows that the millers of Kansas are confronted with market conditions which are beyond their control and beyond the control of this court. It is a market condition and not a theory which affects the flour-milling industry in this state.

Another very important question connected with the matter before us is its effect upon labor. As has already been stated herein, the people of Kansas have solemnly declared by legislative act that workers engaged in this industry shall at all times receive a fair wage and have healthful and moral surroundings. In the reduction of the hours of operation, therefore, the millers should be very careful and solicitious concerning the matter of labor. Skilled and faithful employees should be given such treatment as will enable them during the period of limited production to support themselves and families.

The evidence before us shows that in the Topeka mills skilled men in the milling business are being paid a monthly wage, and are therefore drawing pay whether the mill is running or not. So far as it is possible to do so, this rule should be recognized in all the mills of the state, for it is necessary in the promotion of the general welfare that skilled and faithful workers should always be available for these essential industries which so vitally affect the living conditions of the people.

The court finds from the evidence in this case that the milling industry is one of the essential industries in the sense of the Kansas statute, and subject to such regulation as is necessary to protect the public interest. The court further finds from the evidence that it is an industry which is affected by market conditions; that such influences are inherent in the nature of the business; and that reasonable rules, regulation and practices should be prescribed by this court to be observed in the operation of the industry for the purpose of keeping this court informed as to continuity and efficiency of production, and of securing the best service to the public consistent with the rights of employers and employees engaged in its operation as provided by the Kansas industrial law.

At the hearing of this case the court announced that such was the view of the court in regard to this industry. Some objection to the court's taking such action in the premises was voiced by one of the millers, but, on the whole, the millers present seemed favorable to the plan of the court to prescribe such rules and regulations. The court at the conclusion of the trial appointed a committee composed of Mr. G. A. Engh, the chief accountant of this court; Prof. L. A. Fitz, head of the milling department of the Kansas State Agricultural College; and C. V. Topping, secretary of the Southwest Millers' Association. These men are to formulate such rules and regulations as might enable the court to keep in close touch with the milling industry, and to aid it in such regulation of the same as might be necessary from time to time. After the formulation of the rules and regulations, the same will be considered by the court, and, if they are approved, an order will be made accordingly.

The objects of this investigation having been accomplished, this phase of the matter will now be closed. If later developments should make it seem necessary that the

court take further action in the premises, such action will be taken. In such case new citations will be issued. The present docket will be closed upon the approval and promulgation of the rules to be submitted by the committee aforesaid.

Judges REED and WARK concur.

IN THE

COURT OF INDUSTRIAL RELATIONS

STATE OF KANSAS

In the matter of the application of THE FORT SCOTT SORGHUM-SYRUP COMPANY, a corporation, of Fort Scott, Kansas, for an order modifying the terms and conditions of contract between said company and certain of its employees.

Docket No. 3885

OPINION

February 11, 1921.

BY HUGGINS, *Presiding Judge*

This is a complaint upon the part of the Fort Scott Sorghum-Syrup Company, a corporation, against certain of its employees. The Fort Scott Sorghum-Syrup Company, hereinafter called the company, is engaged in the manufacture of syrup which is used as food for human beings. It also manufactures as a by-product certain stock foods, but its principal business is the syrup business. It operates a plant at Fort Scott, Kan., and another at Pine Bluff, Ark. Its business is peculiar in that its period of active operation covers only from fifty to ninety days in the fall of the year. During that time the company runs its plant twenty-four hours per day and em-

ploys something more than one hundred men. Sorghum cane grown by farmers within a radius of about twenty-five miles of Fort Scott, Kan., is brought into the plant either by railroad or truck. During that time many thousands of tons of cane are run through the crushers and the juice extracted therefrom. The juice is in turn put through a refining process by means of steam until it reaches a stage in which it can be stored in large tanks and preserved. The period of the year in which the plant is operated at full capacity is called the "campaign." After the campaign is over the activity of the plant consists only in mixing and refining the syrup and preparing it for table use. It is then shipped out on orders from jobbers all over the western part of the United States from Canada to Mexico, and from the Mississippi to the Pacific coast. The average annual production of the plant is in the neighborhood of 800,000 gallons of this sorghum syrup, which is known throughout the country as the "Farmer Jones Sorghum Syrup." In carrying on the refining process only a few men are employed. During the campaign a battery of from five to seven steam boilers and engines are in use, but during the refining and shipping process only one is necessary.

On July 15, 1920, the company entered into a contract with the International Brotherhood of Firemen and Oilers, a labor union. This contract is what is known as a "closed-shop agreement." It is entered into by Local Union No. 412 of the International Brotherhood of Firemen and Oilers on the one part and the company on the other part. There is no controversy with regard to wages, working conditions, nor hours of labor. Shortly after the campaign was over in the fall of 1920 a question arose with regard to the employment of firemen. It has been the custom of the company during the period in which the plant is inactive to keep a chief engineer and an assistant

engineer. In previous years it has also kept a fireman and an assistant fireman. The testimony shows that in previous years it has had work for the four men—two engineers and two firemen—even after the close of the campaign, because the one boiler and engine was kept busy in the heating of the plant, the heating of the syrup, and in the process of refining and mixing.

The evidence shows, however, that under present economic conditions the plant, since the end of the campaign of 1920, has been doing only about four or five per cent as much business as it had done upon average years. This unprecedented falling off in the business done by the company is explained by the superintendent as being due to general trade conditions and to competition with other kinds of syrup, which has made it impossible for this company to sell its product upon the market. The company, therefore, discharged the two firemen and proposed to operate the one engine and boiler by the engineer and assistant engineer on their respective shifts, acting as their own firemen, or, in other words, doing two jobs at once. The chief engineer was upon the witness stand in the trial of the case, and testified that, owing to the very little that was being done at this time, he could easily do the work of both the engineer and fireman; that the task of firing the engine during his shift would not require to exceed two hours of his time in a day, and the same would be true with the assistant engineer. He testified that he was perfectly willing to do this work and help out the company during the slack time. However, the engineers' union seem to have warned him that he must not perform the duties of the fireman. Thus the "one man, one job" feature came into controversy. The company claims that the spirit of the contract is that the local union of firemen and oilers should admit to membership, without cost, the engineer and assistant engineer, who, of course, are quali-

fied firemen, so that they might perform this duty without making it necessary either to discharge them and hire nonunion men or to violate any of the rules of the union. No such provision, however, exists in the contract. Upon this point the contract is silent. The failure to insert such a provision seems to have been an oversight by both parties.

The controversy seems to narrow itself down to the question whether this little company shall be required at this time, with its business practically paralyzed, to pay out twelve dollars per day for men who will each be required to do only two hours' work per day. The amount involved is insignificant, but the principle is important. Here is a little plant operating under very adverse conditions. It is shown by the testimony that it is losing money at the present time, and while twelve dollars per day is not a large amount, it increases the deficit. The rule contended for by the local union would cause an economic waste—small, it is true, but nevertheless a waste. Lon Richards, general representative of the International Brotherhood of Firemen and Oilers, who was present at the trial, announced in open court that it was his belief that the local officers at Fort Scott had made a mistake, and that they ought to consent to admit the two engineers to membership and thus to help the company out. Mr. Richards announced that he personally, and as an officer of the International Brotherhood, did not insist upon the "one man, one job" idea under present conditions, and that he believed he would be able to settle the matter by making a trip to Fort Scott and having a conference with the officers of the local union. The court thereupon announced that it would hold the matter in abeyance until efforts had been made to settle these differences; but both parties stated that they had agreed to abide by the order of this court in the matter and insisted that the court

should decide the case in order that the points might be settled and could be followed in future contracts.

The Kansas industrial law recognizes collective bargaining. Section 14 of the act points out the manner in which contracts of this kind may be entered into and become binding upon both parties. This contract is such a contract as is contemplated in the statute. In section 9 of the act, however, it is provided:

"The right of every person to make his own choice of employment, and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided."

The only matter in this contract which demands attention seems to be the question of the "one man, one job" feature. Under the strict terms of the contract the company would be left to the choice of either standing for the economic waste or repudiating the contract and making its business an "open shop." As stated before, the Kansas industrial law recognizes the closed shop by mutual agreement. The law, however, penalizes the strike, the boycott, the blacklist and the lockout. Therefore, a closed-shop condition forced upon either employers or employees by means of intimidation or "economic pressure" cannot lawfully exist in Kansas. In the present case the closed-shop agreement, being by mutual consent and free from any form of duress, is not contrary to the law; but the public has an interest in such contracts as this, because any

economic waste in the essential industries, if long continued, must be paid by the ultimate consumer—the general public. It is unfair to the public that two men should be drawing wages for doing the work that one man could easily do. On the other hand, it is perfectly proper that a labor union should make such a collective bargain as this and should insist upon the strict observance of the same by the company, provided there is nothing unfair to the public contained in the bargain. Even the "one man, one job" principle may be right under certain conditions. It would be right if it were invoked for the purpose of protecting skilled men from being demoted and compelled to do work which would have a tendency to cause deterioration of their abilities in the skilled line which they have chosen and for which they have fitted themselves. But in this case no such condition exists. The sole question before us is whether the rule could be invoked under such conditions as to cause preventable economic waste.

This contract was entered into after the taking effect of the Kansas industrial law, and is, therefore, subject to the provisions of that law. Under the authority conferred upon this court by section 9 of the industrial act, in any proper proceeding this court may order the modification of the contract so as to eliminate anything that may be unfair, unjust or unreasonable. It is the opinion of the court that this contract should be modified in one of two ways: first, by an express statement that to avoid economic waste the company will be permitted in times of slack work to have one man work at two or more jobs, provided only that the terms of the contract with regard to hours of work be observed; or, second, that the contract should be amended so as to provide that in case of slack work, if it becomes necessary to avoid economic waste, that one man should be permitted to work at two or more jobs, then such employee as may be assigned to such duties may be

transferred to membership in this union without cost to the man or to the company and may continue in such membership as long as the necessity for working at two or more jobs shall continue.

An order will issue accordingly.

Judges REED and WARK concur.

IN THE

COURT OF INDUSTRIAL RELATIONS

STATE OF KANSAS

W. E. MAY, President; ORVILLE A. CHASE, Secretary; HUNTER BLAIR, Treasurer, of Local Union 176 of the Amalgamated Meat Cutters and Butchers Workmen of North America, a labor union, *Complainants,*

vs.

THE CHARLES WOLFF PACKING COMPANY, a corporation, *Respondent.*

Docket No. 3926

OPINION

May 2, 1921.

By HUGGINS, *Presiding Judge.*

The complaint in this case was filed on January 19, 1921. The issues were joined by the filing of an answer by the respondent on the 28th day of January, 1921. This case has been delayed far beyond what is usual in this court because of changes made in the industrial law by the legislature, which was in session at the time the complaint was filed and remained in session until about the middle of March. The legislature made such changes as took away from the Industrial Court the work of the Public Utilities Commission; and because of that change there was a change in the personnel of the court and in the per-

sonnel of the working force, all of which has caused some delay herein.

The complainants are the president, secretary and treasurer of local union No. 176 of the Amalgamated Meat Cutters' and Butchers' Workmen of North America, a labor union. The respondent is a meat-packing company, whose plant is located in the city of Topeka, Kan. The respondent's business consists in the slaughtering of various kinds of live stock and converting the said live stock into meats of various kinds and qualities, lards, oils anl other products, all or nearly all of which are used as food for human beings. The complainants state that a controversy has arisen between the respondent and its employees which, at the time of the filing of the complaint, was endangering the continuous operation and efficiency of the plant, and thus affecting the public by hindering, delaying or possibly entirely suspending the operation of the plant in the manufacture of such commodities necessary for human food within the state of Kansas and within the vicinity. It is further stated in the complaint that the respondent has failed, neglected and refused, and still fails, neglects and refuses, to settle the matters and things involved in said controversy; and that if said controversy be not settled it will lead to other and further disputes and will produce industrial strife and disorder and endanger the public peace, the public health and the general welfare.

Specifically, the complaint states that prior to January 1, 1921, said local union No. 176 and its members were employed by the respondent under the terms and by virtue of a written contract in the nature of a collective bargain; that said contract by its terms would expire on January 1, 1921, unless renewed by the parties. That on January 14, 1921, the respondent gave notice to the complainants,

through their said officers and by posted notices, that said contract would not be renewed for another year, and that respondent has refused to enter into any contract for the government or control of future employment of the members of said union. That the respondent, on the 14th day of January, 1921, gave notice to the members of said union and to other employees that the wages had been cut; that said cut in wages would range in the different employments all the way from seven and one-half cents per hour to fifteen cents per hour. That under the terms of said collective contract a basic day of eight hours was recognized, and there was a guarantee of at least forty hours per week employment at the regular rate set out in the schedules, which were a part of said contract, and also that overtime from and after the eight hours' work in any one day should be paid to the employees at the rate of time and one-half. That all of said provisions had been abrogated by the respondent; and that at the time of the filing of the complaint there was no basic day established and no stated time constituting a day's work; that there was no guarantee as to the number of hours' work during the week, and that in certain of the skilled employments other modifications had been made which reduced the wage. That under paragraph 10 of the contract a bonus of five cents per hour in addition to the rates set out in the schedule was paid to all permanent employees three times a year, and that under the wage scale instituted by the respondent at the expiration of said contract the bonus had been entirely taken away. The complainants pray that the court take jurisdiction of the controversy and enter upon a full investigation of the dispute, and that after said hearing the court make an order fixing a fair and reasonable wage for the complainants, and authorizing and compelling the respondent to enter into a contract for the

continuance of service of its employees at such fair and reasonable rates, and for such other relief in the premises as might be found right and proper under the industrial law of this state. The complaint is verified by the three officers of the union above named.

The answer of the respondent contains: (1) A general denial; (2) an admission of the incorporation of the respondent and the nature of its business substantially as alleged in the complaint; that the wage contract set out in the complaint was, as a matter of fact, entered into as alleged and that its terms were as alleged, but that it expired and ceased to have any binding force or effect upon either of the parties on December 31, 1920; (3) an allegation that the respondent had scrupulously performed all the obligations imposed upon it by the terms of said contract; (4) denying any liability under the bonus clause contained in section 10 of the former contract; (5) a statement that the respondent was not given a fair opportunity to discuss with its workers the provisions of any new contract, but that the workers presented a typewritten contract and demanded signature without discussion; (6) a statement that if there be anything due to the complainants by virtue of the former contract which expired on December 31, 1920, the respondent is able, ready and willing to pay the same upon the order of any court of competent jurisdiction; (7) an allegation that the business of the respondent was operated during the year 1920 at a loss in excess of $100,000, and that a continuance of the wages provided for in said wage agreement would necessarily result in confiscation of respondent's property; (8) an offer on the part of the respondent to open up its books, accounts, papers, documents and business to the inspection of the court or its expert accountants, saving only to itself proper access to the same for business purposes during the progress of said inspection; (9) a denial

of the jurisdiction of the industrial court to enter any money judgment for past-due wages under the terms of said contract, if any should be found.

The respondent then prays that a finding and order be entered by the court, setting forth that respondent's dealings with its employees have been just, fair and reasonable and that no grounds exist for said complaint, and that the court do nothing which may impair respondent's ability to furnish articles of food for human consumption, and to furnish an open, free market for live stock, and that the respondent's business be shielded and guarded against any interruption.

At the beginning of the trial of this case the complainants asked and obtained leave of court to file an amendment to their complaint. In this amendment they complained that women workers are paid a much lower wage than men for the same class of work, and ask the court to make an order fixing the wage of women and men doing the same class of work at the same rate. After taking the matter under consideration, and at the beginning of the second day of the trial, the respondent in open court consented that any order made herein should contain a provision that women and men at the same class of work should receive the same pay.

Both parties to the controversy also in open court stated that the business of the respondent had always been operated upon what is known as an "open-shop" basis, and that no change in that regard was desired by either party.

The complaint herein is filed, as before stated, by the officers of the organized workers, but will be treated by the court as a complaint upon behalf of all employees now engaged or hereafter to be engaged in the operation of the respondent's plant in Topeka.

At the trial of this case complainants were represented

by the three officers of the local union; by a Mr. Joyce, the general auditor of the international union; and by Mr. Jimerson, president of the union in this district, composed of Kansas and five or six other states. They were also represented by the attorney-general of the state of Kansas and by an attorney appointed by the Court of Industrial Relations. The respondent appeared by its president and manager and its counsel. A great volume of testimony was taken, and the trial of the case occupied the attention of the court for seven consecutive days.

It will not be necessary in this opinion to recite the evidence in any detail. The evidence shows that the present plant of the Charles Wolff Packing Company is the consummation of the life work of Charles Wolff, senior, who began in Topeka nearly fifty years ago as an ordinary butcher, buying his own live stock, butchering it himself by the aid of a few helpers, and supplying meat to the local trade. The business expanded from year to year until finally it became too large for a single individual to handle successfully, and was incorporated. Charles Wolff, senior, died a few years ago, and was succeeded by his son, Charles Wolff, junior, the present managing officer of the plant. After the death of Charles Wolff, senior, the stock of the corporation was sold to what is known as the Allied Packers, a corporation owning and operating packing plants in several of the states and in the Dominion of Canada. The evidence shows that the Wolff management has not materially changed, and that Charles Wolff, junior, is in charge of the business at this time and is conducting it in very much the same way as it has been conducted for many years past. During the life of Charles Wolff, senior, the employees were not organized, but they were organized under their present union organization about two years prior to the filing of the complaint herein. The evidence further shows that there has never been any serious con-

troversy between the management and the employees until the present time.

A large amount of testimony was taken with reference to the present cost of living as compared with the same cost one year ago. There is a conflict in this testimony. The complainants contend that the downward trend in the cost of the necessaries of life has not materially affected the retail trade as yet. On the contrary, the evidence of the respondent tends to show that there has been a reduction in the cost of the necessaries and comforts of life amounting to 25 per cent or more within the past twelve months.

It is admitted that the contract of employment as set out in the complaint was entered into as alleged therein, and that wages were paid in accordance therewith and working conditions were governed thereby from the 1st of January, 1920, until the 17th of January, 1921. On the latter date a reduction in wages was made by the respondent. The evidence shows that the wage cut amounts, on the average hourly wage, to a reduction of 10¼ per cent upon the wages provided for under the contract. This reduction, however, is not uniform. In some of the positions in the plant the wage is slightly increased by the new schedule, while in others it is reduced considerably more than 10¼ per cent.

One of the principal contentions in the evidence is the question of the eight-hour basic day. Upon this point the evidence shows that many workers, especially those engaged in what is called the killing, cutting and trimming departments, are in the very nature of the business compelled to work under conditions which are disagreeable and are not conducive to the health of the workers. Some of these workers are standing over scalding vats in rooms that are more or less filled with steam from the hot water; others are working under conditions which require them

to wear rubber boots and rubber clothing to protect themselves from blood, water and steam; others are handling the entrails and the different parts of the carcasses of the slaughtered animals and using water in the cleansing process. While the evidence shows to the entire satisfaction of the court that the work in this plant is done under the best possible conditions of cleanliness, nevertheless there is about the work that which not only requires strenuous physical exertion, but is also disagreeable and more or less unhealthful in other respects.

This packing plant is what is known among packers as a small plant, employing between 300 and 400 people. The help is shifted from one position to another as the necessities of the case may require, so that it is very difficult to classify and to separate the workers who are required to work under conditions such as have been described from those who have more favorable positions. In this plant, because of the limited number of men employed, the men are shifted from one job to another when occasion requires it. For instance, a man may be employed in the cattle-killing gang for a part of his time, and then may be transferred to some other department when his services are no longer needed in the cattle-killing department. The rate of pay may be different in the two employments. This makes the wage scale a complicated matter.

The evidence shows also that the workers in these departments are compelled when they arrive at the plant in the morning to take off their ordinary clothing and to put on clothing which will protect them from the dampness and from direct contact with the carcasses of the slaughtered animals and which will meet the requirements of Federal regulations in such matters; and before they leave at night they must, of course, change back, wash themselves, and prepare to return to their homes. Now this process, which occupies the time of the employees from

thirty minutes to an hour per day, is done on the employees' own time; the hourly wage does not begin until the employee gets to his place of duty, and it ends when he leaves that place of duty after the day's work is done. To do an eight-hour day's work, therefore, workers engaged in this occupation are required to be inside the plant at least eight and one-half hours and possibly nine hours per day.

In view of all these matters, it is the opinion of the court that this is an employment in which eight hours, as a general rule, should constitute a day's work.

On the other hand, the respondent's evidence shows that it is unable to control the supply of live stock. Farmers and stock raisers will ship in the live stock when it is ready to ship; and so in spite of all the management can do to keep up a steady supply, there will be times when the yards fill up and it becomes necessary in order to avoid great loss to the company to run more than eight hours a day.

A sharp conflict in the evidence took place upon this proposition. It is claimed by the respondent that in some instances where time and one-half for overtime is paid, employees, and especially those who are not permanently employed by the company, will "slack" on the job the seventh and eighth hours for the purpose of getting over into the ninth hour to get the high pay. Respondent therefore claims that the extra pay for overtime is a reward for slack work on the part of the workers. This accusation is bitterly denied by the complainants, who claim that the workers generally would prefer the eight-hour day at the lower wage than the nine-hour day at the higher wage. The evidence is so conflicting that the court must, of course, call to its aid its general knowledge of human nature.

Overtime should not be considered in the light of extra

pay; the wage should be fair on the eight-hour basic day. Overtime should be considered as a penalty upon the company to prevent the long hours and exhaustion of the workers. It is evident, therefore, that the company should not be penalized when, by reason of circumstances over which it has no control, it may be necessary to run the plant a little longer than the eight-hour day in order to save loss which would otherwise occur. On the other hand, there must be some provision which would prevent the management from taking advantage of that situation to work long hours for the mere purpose of making extra profits. The matter of overtime should also be so adjusted that it would not be a temptation to an unfaithful employee to slack his work during the eight-hour period in order to reap the reward of the higher wage in the ninth and tenth hours.

Another serious controversy in the case arises over the question of the weekly guarantee. It seems from the evidence that it has been the custom of packing companies such as the respondent to guarantee to its workers forty-four hours employment per week. This custom never has prevailed in the respondent's plant, but under the previous contract there was a guarantee of forty hours per week. The evidence shows that the plant has been running so continuously prior to the trial of this case that the matter of the guarantee was of little consequence; but the complainants are very insistent that such a guarantee shall be provided. The theory of the workers is, of course, that in the absence of such a guarantee the employees are wholly dependent upon the continuity of operation. If the plant operates three or four days a week the earnings of the workers fall so low that it is impossible for them to live decently, and that any wage fixed by this court might be made an unfair wage by the company limiting its operation. The respondent, on the other hand, claims that some

of its workers, and especially its transient workers who remain with it for a very short time, take advantage of this guarantee, refusing at times to respond when they are needed for work, but always claiming the benefits of the guarantee in case the work has been slack and they have not been offered the forty hours per week employment. The respondent, however, frankly states that it recognizes that the regular employees must be given such continuous employment as will enable them to decently support themselves. The respondent in this connection stated in open court that any fair and reasonable rule promulgated in the order will be observed by the respondent.

This case involves one of the most serious considerations in connection with the administration of the industrial act. The respondent is not a public utility; it is one of those industries which are declared to be impressed with public interest; but the court has no power to regulate the prices which it may charge for its commodities as may be done in regard to public utilities. Therefore, any order made by this court fixing a wage must be very carefully considered, in view of the fact that the respondent is doing business, and must continue to do business, upon an open and more or less competitive market, and in view of the fact that the plant cannot be expected to operate for any long period of time at a loss. On the other hand, it may be stated that there is an irreducible minimum below which workers cannot be and must not be required to work. Unfortunately, the laboring man is not in a position to take advantage of rising markets or prosperous conditions to make a big profit at any time. This the business concern may do and often does do. Just at the present time the business of the respondent, as shown by the evidence, is not in a prosperous condition. It is admitted, however, that the loss which occurred to the

respondent last year was caused by world-wide business conditions which are believed and at least are hoped to be temporary. The respondent frankly states that the prospects for the coming year are brighter, and it is hoped that the business will be more prosperous.

The industrial law of this state is intended to be as fair to capital as it is to labor. It is specifically declared that it is necessary in the promotion of the general welfare that labor employed in these essential industries shall receive a fair wage and that capital invested therein shall receive a fair return. Any order made by this court, after having been put into force and effect for a period of sixty days, may be reviewed at the instance of either party and additional evidence introduced to show its practicability, its impracticability, its reasonableness or its unreasonableness. The order made in this case at this time will be made in view of that provision of the law. The business conditions of the day are unusual and unstable, and sixty days or ninety days may bring about such changes as would require a revision of any order made herein.

In view of all the evidence the court finds that—

(1) In this industry the principles of the open shop, as now and heretofore existing by agreement of the parties, should be approved by the court and should continue.

(2) Employees, whether organized or unorganized, should receive wages as shown in schedules hereinafter set out, which said wages the court finds to be reasonable and fair.

(3) A basic working day of eight hours should be observed in this industry; but a nine-hour day may be observed, not to exceed two days in any one week, without penalty: *Provided, however,* That if the working hours of the week shall exceed forty-eight in number, all over forty-eight should be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight-

hour day shall be observed more than two days in any one week, all over eight hours, except for said two days in said week, should be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer.

(4) No guarantee of time per week is specifically found at this time; but sufficient work should be offered to the regular employees in each and every month so that the monthly earnings of regular workers will be sufficient to constitute a fair wage under the Kansas industrial law, as heretofore defined by this court.

(5) The management of the industry should, whenever possible, notify the workers in case the plant is not to operate the following day, by bulletins posted at the time clock prior to the closing hour, and if that be impossible, then by signal from the steam whistle the following morning, to make it unnecessary for workers to come to the plant when there will be no work.

(6) Hours of beginning work should be set by the management and may be changed when necessary; but reasonable notice should be given the employees of changes.

(7) The seniority rule as heretofore observed in the industry may continue.

(8) Reasonable rules and regulations in regard to conduct about the plant may be made from time to time as the same may be necessary, and reasonable notice of all such should be given by posting at the time clock or personal notice to employees.

(9) Women workers should receive the same wages as men engaged in the same class and kind of work.

(10) Toilets and dressing rooms used by the women workers should be in charge of a woman.

(11) Piece-work rates should be paid in accordance with piece-work schedule herein set out.

(12) Minor details in regard to work and wages cannot

be set out in an order of this court; but whenever differences arise at any time they should be taken up by the grievance committee of the employees and the management, and reasonable time should be allowed for consideration and adjustment of the differences.

(13) The total working time for women employees, inclusive of overtime, should not exceed fifty-four hours in any one week and not more than nine hours in any one day.

(14) Workers paid by the week or day, if employed within the plant and not within the office or sales department, should be subject to hours of work and overtime as other employees under the terms of finding No. 3 hereof.

(15) In view of the reduction in the cost of the necessities and the comforts of life, the wages hereinafter set out in the schedules are, in the opinion of the court, the equivalent in purchasing power of the wages paid under said contract of 1920.

(16) The temporary order heretofore made in this case was at the time reasonable and fair and should stand and be complied with by the respondent company, beginning on the date of said temporary order and continuing until May 1, 1921.

(17) The respondent company should, within a reasonable time, furnish suitable room for its employees in which to eat their mid-day lunch, well ventilated and apart from those portions of the packing house in which the work of slaughtering animals and dressing and preparing the packing products is carried on, and apart from toilets and dressing rooms.

(18) The following is a fair and reasonable schedule of minimum wages to be paid by the respondent company to its respective employees, effective May 2, 1921, to wit:

ORDERS ISSUED IN FIRST COAL INVESTIGATION

In April, 1920, at the close of a ten days' hearing at Pittsburg on an investigation of the coal mining industry, the Court took the following action:

1. The evidence showed that a large percentage of the miners were not content to draw their wages twice a month as provided by law but for various reasons would draw between pay days, amounting to practically every week. For many years the mine operators had charged ten per cent discount to every miner who drew wages between pay days. This ten per cent discount was upon money which the miner had already earned but which, under the law, the operator could not be compelled to pay until a week later. This ten per cent, therefore, would amount to ten per cent a week or 520 per cent per annum. The Court ordered this practice stopped and fixed a minimum charge of 25 per cent to cover extra bookkeeping expenses with a maximum of two per cent for the larger amounts.

2. The award of the Federal Bituminous Coal Commission had left the question of the price of powder and other explosives purchased by the miners from the operators open for adjustment. The operators immediately put up the price, causing many of the mines to close down because the men refused to work under this uncertainty. The Court ordered the operators to furnish these materials at the old price until a reasonable time had elapsed for meetings of committees, etc., to determine the matter amicably, if possible; if not, to submit it to the Court.

3. The evidence before the Court showed that the check-off system had been used to collect large sums of money by the way of fines and other assessments and that large sums of this money collected from the men who worked underground had been used unlawfully by the district officers. $10,000 of it had been handed over to a socialist paper published in the state of Oklahoma, although the evidence showed that many miners were republicans or democrats and only a part of the miners adhered to the socialist faith. The evidence also showed that an amendment to the constitution had been voted upon by the District Convention, imposing a fine of $50 upon any miner who appealed to the Court of Industrial Relations, and $5,000 fine against any local union officer who might do likewise. Upon this showing the Court ordered the operators to use the check-off system only for the purpose of collecting union dues and sick and death benefits and such nominal fines as might be imposed for disciplinary purposes, but to collect no fines other than those except upon written order of the union officers, showing the reason for their imposition. The operators are obeying this order.

THE COURT OF THE PENNILESS MAN

During the first session of the Kansas Court of Industrial Relations held in the coal mining district at Pittsburg, Kansas, the local bar association gave a dinner in honor of the Court. Wm. L. Huggins, the presiding judge, responding to the toast, "The Court of Industrial Relations," said in part:

"This court is known as the 'Court of Industrial Relations.' It might properly be called the 'Court of the Penniless Man.' The legislature of the state of Kansas, out of deference to labor, created a tribunal in which justice is administered without money and without price. The poorest man in Kansas, if he is engaged in any of the essential industries named in the law, may at any time come into this court and make his complaint known. The state provides him with a lawyer who will prepare his case for him without charge. It provides him with expert accountants and engineers, and with trained examiners, who will investigate his case and prepare his evidence for him, free of charge. He is not required to put up a bond for costs, nor to pay his own witnesses. He is supplied by the state with everything he needs in the way of expert advice and assistance. The law enjoins upon the Court of Industrial Relations that it shall do all things necessary to develop the facts in the case.

"The law does more than this for the laboring man. It provides that, if after the Court of Industrial Relations has rendered its decision and made its order, the laborer is dissatisfied, he may take the matter before the Supreme

Court of the state of Kansas, the highest court in the state and as good a court as there is in the United States of America. In case he desires to take his grievance before the Supreme Court, the evidence which the state helped him prepare and introduce in the Court of Industrial Relations is transcribed by an expert reporter for him, paid by the state, and so he goes with his grievance, and with all his evidence, to the Supreme Court of the state of Kansas still without a penny's cost. The legislature has commanded this court to investigate his living and working conditions, and so even the wife and children of the laboring man, if they desire to do so, can come into this court with the same complaint and receive the same treatment.

WHAT IS A FAIR WAGE?

"The law does more than this for the laboring man. It expressly declares that it is necessary for the general welfare that workers, engaged in the essential industries, shall receive a fair wage and have moral and healthful surroundings while engaged in such labor. This raises the question: 'What is a fair wage?' A wage which only enables the frugal and industrious man to provide himself, and those necessarily dependent upon him, with food enough to sustain life and with such clothing and shelter as is necessary to preserve health, is not a fair wage in the American sense. A fair wage is more than that. A fair wage must provide a sufficient return, so that an honest, industrious, and frugal man will be enabled to procure for himself and his family all the necessaries and a reasonable share of the comforts of life; that will enable him by industry and economy not only to provide himself and wife with opportunities for intellectual advantages and reasonable recreation, but also will enable the parents working together to furnish to the children

ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage, in the American sense of the term, will also allow the frugal man to provide reasonably for sickness and old age.

"I have never heard of any such a court before. I have never heard of any legislature or parliament in any country in the world that has created such a tribunal, into which the poorest citizen may come and receive the same treatment, and the same advantages, and the same justice, as though he were a millionaire. I know of no other state that has by law required that every industrious and faithful worker shall receive a fair wage.

"The only surprise that I have had, with regard to this legislation and this court, has been the surprise which has come to me when I have learned that men who are receiving salaries from labor unions, and who are under the strongest moral obligation to use their utmost endeavors to promote the best interests of the real workers of the land, have denounced the court and the law as an instrument of oppression. This position on the part of certain highly paid officials of labor organizations is, to me, simply astounding."